
BENCH TRIAL DAY 7 - AM SESSION
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UNITED STATES DISTRICT COURT

A P P E A R A N C E S

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U.S. DEPARTMENT OF JUSTICE CIVIL RIGHT DIVISION VOTING
SECTION - 950

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I N D E X**PLAINTIFF WITNESS:****DIRECT****CROSS****REDIRECT****RE CROSS**LORRAINE MINNITE, Ph.D.

By Mr. Dodge

1555

1633

By Mr. Langhofer

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By Mr. Horley

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MARK HOEKSTRA, Ph.D.

By Mr. Langhofer

1640

P R O C E E D I N G S

(Proceedings begin at 9:00 a.m.)

COURTROOM DEPUTY: All rise, court is now in session.

THE COURT: Morning, please sit down.

Plaintiffs may call their next witness.

MR. DODGE: Your Honor, plaintiffs call Dr. Lori Minnite to the stand.

COURTROOM DEPUTY: Ma'am, if you want to come step up here, please.

Raise your right hand for me.

(Witness is sworn.)

COURTROOM DEPUTY: Can you state your name and spell your name for the record, please.

THE WITNESS: Lorraine Carol Minnite,
L-o-r-r-a-i-n-e, C-a-r-o-l, M-i-n-n-i-t-e.

MR. DODGE: Christopher D. Dodge on behalf of the Mi Familia Vota plaintiffs.

We intend to use a demonstrative for Dr. Minnite's testimony. I have a hard copy if Your Honor would like it. I understand that you haven't been taking them, but I wanted to make the offer.

THE COURT: I'd prefer to look at it on the screen with everyone else.

MR. DODGE: Understood, Your Honor.

1 DIRECT EXAMINATION

2 BY MR. DODGE:

3 Q. Good morning, Dr. Minnite. I think everyone will be
4 happy to hear, perhaps you most of all, that you will be the
5 last witness plaintiffs will be calling this week.

6 With that, could you please state your full name for the
7 record.

8 A. Lorraine Carol Minnite.

9 Q. And could you please describe --

10 MR. DODGE: Can we pull up the demonstrative,
11 please, and if we could go to Slide 2. Thank you.

12 BY MR. DODGE:

13 Q. Could you please describe your educational background for
14 the Court?

15 A. I have a Bachelor of Arts degree in History and Master's
16 and a Ph.D. in Political Science.

17 Q. And can you tell the Court where you're currently
18 employed?

19 A. Rutgers University in Camden, New Jersey.

20 Q. And what's your position there?

21 A. I'm Associate Professor.

22 Q. In what department?

23 A. Department of Public Policy and Administration.

24 Q. And how long have you taught at Rutgers?

25 A. Twelve years.

1 Q. And are you a tenured professor at Rutgers?

2 A. Yes.

3 Q. Can you describe for the Court at a general level the
4 research you do on elections?

5 A. I focus on the incidence of voter fraud in American
6 elections.

7 Q. And for how long have you studied the incidence of voter
8 fraud in US elections?

9 A. Over twenty years.

10 Q. And why did you first begin to study this issue?

11 A. I was a new professor and I was approached by Miles
12 Rapoport, who had been the Secretary of State for the State of
13 Connecticut, about research on the question of voter fraud and
14 what political scientists knew about it.

15 He had become the president of a new policy organization
16 in New York City called Demos, and he just said, "You know,
17 we've tried in Connecticut to pass election day registration,
18 and every time we try to make it easier to vote, we get the
19 argument that that will make it easier to commit fraud. So
20 how much fraud is there?" and that -- you know, I thought I'd
21 spend about three months on that, and it's been a lot longer
22 than that.

23 Q. Here we are twenty years later?

24 A. Yeah.

25 Q. Are you familiar with the academic literature regarding

1 the incidence and effects of fraud in US elections?

2 A. Yes.

3 Q. And are you familiar with that literature through your
4 own academic work and research?

5 A. Yes.

6 Q. Can you describe some of the highlights of your research
7 into the incidence of voter fraud for the Court?

8 A. Yeah, so I mentioned the early reports that I did, a
9 couple of them, for organizations but then I did -- all of
10 that built into a book that I published in 2010, and then
11 other publications and edited books as well on various aspects
12 of the question of voter fraud.

13 Q. I'd like to ask you a bit more about your book of voter
14 fraud. Can you tell me the principal conclusion you draw in
15 that book?

16 A. Yes, the principal conclusion was that the incidence of
17 voter fraud in American elections was exceedingly rare and did
18 not pose a threat to electoral integrity.

19 Q. And how long did you research and work on the myth of
20 voter fraud?

21 A. It was, you know, eight or nine years.

22 Q. What types of sources and data and information did you
23 evaluate when writing the book?

24 A. So a very wide range of material because, like I said, I
25 thought I would spend three months looking up the statistics

1 and getting the answers, and it turns out, you know, there's
2 no national databases or things like that that are easily
3 accessed.

4 And so I ended up looking everywhere for it, and that
5 included then, you know, mining the academic literature of
6 which there was very little. I looked at news sources,
7 thousands and thousands of newspaper articles. I looked at
8 government reports of all kinds, all agencies. I looked at
9 contested elections, Congressional reports.

10 I ended up doing case studies in four places that
11 involved interviewing 25 or 30 people including, you know,
12 prosecutors, defense witnesses, voters. I looked at the range
13 of advocacy groups on both sides, what they were saying about
14 it, what information they had and just -- you know, anything
15 anywhere I could find.

16 Q. And after you completed your work on the book -- that
17 book was peer reviewed, right?

18 A. Yes, as a -- university press books are peer reviewed.

19 Q. Are you aware of any other peer-reviewed books on the
20 incidence of voter fraud in US elections?

21 A. No.

22 Q. Not to be glib, but is it fair to say that you wrote the
23 book on voter fraud?

24 A. I think so.

25 Q. Has the myth of voter fraud been recognized by any

1 government agencies as a significant authority on the question
2 of voter fraud?

3 A. Yes.

4 Q. Can you tell the Court an example of that?

5 A. An example is in 2014 the Government Accountability
6 Office was asked by Congressional members to look at the
7 extant literature and any evidence for the issue of in-person
8 voter fraud and voter impersonation, and they collected about,
9 you know, 300 studies that they then subjected to an
10 assessment, an evaluation for their methodology, whether these
11 studies use systematic scientific methodologies; and of all of
12 those studies they identified five that they thought met their
13 standards, and my book was one of the five.

14 Q. We'll talk about your book a bit more later, but for now
15 I'd like to move on to your prior work as an expert witness.

16 Have you ever testified before as an expert witness on
17 the topic of voter fraud?

18 A. Yes.

19 Q. About how many times?

20 A. About a dozen.

21 Q. In state and federal courts?

22 A. Yes.

23 Q. And have those courts recognized you as an expert in the
24 subject of voter fraud and its effects on US elections?

25 A. Yes.

1 Q. Has your testimony on the frequency of voter fraud been
2 found credible by courts?

3 A. Yes.

4 Q. Repeatedly?

5 A. Yes.

6 Q. Has any court ever found you unqualified as an expert on
7 the issue of voter fraud?

8 A. No.

9 Q. Has any court found your testimony to not be credible on
10 this issue?

11 A. No.

12 Q. Has any court ever found your testimony to be biased?

13 A. No.

14 Q. In your work as an expert witness, do you ever assume
15 what you will find with respect to the incidence of voter
16 fraud in a particular jurisdiction?

17 A. No, all of this work -- mostly -- most of this work in
18 terms of the expert witness testimony came after the
19 publication of my book and usually involved a question about
20 fraud in a particular state.

21 So each time that I was asked to provide an opinion about
22 voter fraud in a particular state, I would start anew; and it
23 was good experience because as a social scientist you train to
24 be skeptical and to, you know, continuously question your
25 findings; and so I've, in a sense, put the test to my thesis

1 in my book, you know, put it to the test with the subsequent
2 work that I've been asked to do.

3 So I -- you know, I'm always saying maybe -- "Did I miss
4 something?" "What don't I know about this particular state?"
5 and that has given me the opportunity, then, to dig into the
6 sources deeper in a particular state and see what -- you know,
7 what I might find there.

8 Q. Beyond your work as an expert witness, have you ever
9 testified before other government bodies about the issue of
10 voter fraud?

11 A. Yes.

12 Q. Can you just give a couple examples to the Court?

13 A. I testified about a House subcommittee. I also submitted
14 -- was asked to submit written testimony to a Senate
15 subcommittee, and I also testified before the US Commission on
16 Civil Rights.

17 Q. You prepared a report in this case?

18 A. Yes.

19 Q. Do you have a copy of that in front of you?

20 A. Yes.

21 Q. And is your CV included in your report as Appendix A?

22 A. Yes.

23 Q. All right. I'd now like to turn to the conclusions you
24 reached in your report in this case.

25 MR. DODGE: Can we pull you up plaintiffs' Exhibit

1 325.

2 BY MR. DODGE:

3 Q. Can you tell us what this document is, Professor Minnite?

4 A. It's the first -- looks like the first page of my report.

5 MR. DODGE: And if we could go to Slide 6 of the
6 demonstrative now.

7 BY MR. DODGE:

8 Q. Can you tell the Court what issues you analyzed in your
9 report?

10 A. Yes, I was asked questions to answer; and so the opinions
11 that follow are based on these issues, which were the
12 incidence of voter fraud in the United States in Arizona,
13 whether the Challenged Laws in this litigation were likely to
14 reduce voter fraud in Arizona, and then the impact of
15 misinformation about voter fraud on voter confidence.

16 Q. And on that first question, you looked, in particular, at
17 the issue of whether non-citizens vote in Arizona's elections;
18 is that fair to say?

19 A. Yes, I was asked to focus on -- on that type of fraud.

20 Q. Okay. Let's briefly go through your conclusions on those
21 three issues.

22 MR. DODGE: If we could go to the next slide,
23 please.

24 BY MR. DODGE:

25 Q. What did you conclude about the incidence of voter fraud

1 both in the US and in Arizona and particularly with respect to
2 non-citizen voting?

3 A. I concluded that the incidence of voter fraud nationally,
4 and again in Arizona, is exceedingly rare. That includes
5 non-citizen voter fraud, and that popular claims about voter
6 fraud have been repeatedly shown to be false.

7 Q. And what did you conclude about whether the laws at issue
8 in this case will reduce voter fraud and not citizen voting in
9 Arizona?

10 A. The way I thought about that question was, you know, what
11 was to reduce? And because I had found very little voter
12 fraud in Arizona, the laws are not going to reduce it really
13 further. I didn't see anything in the -- you know, in the way
14 that would work.

15 Q. And finally, what did you conclude about the impact that
16 false allegations about voter fraud have on public confidence
17 in elections?

18 A. I found there were no reason to -- or no persuasive
19 reasons to believe that the Challenged Laws would improve
20 confidence and that, you know, misinformation probably is
21 lowering confidence in elections.

22 Q. Great. I'd like to get into your first conclusion, but
23 before that I just want to talk a little bit more about how
24 you look for voter fraud and how you define voter fraud in
25 your work.

1 How do you look for voter fraud in your work?

2 A. So as I mentioned, my naivety twenty years ago thinking I
3 could just find the statistics led me down this long path of
4 trying to answer the question about the incidence of voter
5 fraud.

6 So what is appropriate for a kind of question like that
7 when you're trying to measure something empirically and the
8 sources are incomplete and scattered is what we call, in
9 social science, a kind of mixed methods or multi methods
10 approach.

11 And the idea is that you -- you look at all kinds of
12 sources, anything you can think of, and we might put them in
13 buckets of qualitative sources and quantitative sources and
14 you look for patterns in the findings understanding that no
15 one source is maybe complete; and so you -- you look for those
16 patterns and if you find -- you know, one source is telling
17 you, for example, there's a lot of fraud and another source is
18 telling you there's not a lot of fraud, you have to resolve
19 those conflicts until you have a kind of convergence on an
20 answer, and then you make inferences from that information.
21 So that's the methodical approach.

22 Q. And is it fair to say with a mixed methods approach, you
23 don't draw a conclusion until you see that kind of convergence
24 in the sources you're looking at?

25 A. Exactly. It's a problem where you can't rely on one

1 source because -- for whatever reason, it's not a complete or,
2 you know, accurate -- or not accurate, but it may not be a
3 complete source; and so you keep looking and you keep, you
4 know, comparing what you're finding using different sources.

5 And, again, so, for example, if, you know, every person I
6 interviewed said, "Oh, there's a tremendous amount of fraud.
7 We just know there's a tremendous amount" -- or if I just
8 followed the public allegations that seem to suggest there's a
9 lot of fraud and I drew a conclusion from that, that would not
10 be good social science.

11 So I needed to figure out, you know, where it would show
12 up when it showed up and look across a range of sources until
13 I came to the conclusion that it was rare. Not non-existent,
14 but rare.

15 Q. And mixed methods is the approach you used in your book?

16 A. That's correct.

17 Q. Does mixed methods rely upon conviction data to analyze
18 the incidence of voter fraud?

19 A. Well, conviction data certainly is part of it.

20 Conviction data is, you know, showing you where there's been a
21 violation of the law. The person's been prosecuted,
22 convicted, but it's not the only source.

23 Q. Do you believe that voter fraud is sometimes difficult to
24 detect?

25 A. Yes, I think my journey in this research tells me that

1 it's difficult -- it can be difficult to detect, although I
2 point out that the Justice Department has a training manual
3 for US Attorneys on election crimes and how to detect them and
4 how to investigate them and how to prosecute them and what all
5 the legal statutes are and all the legal requirements, and
6 they say in there it's not that hard to detect.

7 So, you know, I think under different conditions it may
8 be difficult, others conditions it may be obvious.

9 Q. You acknowledged --

10 THE COURT: Excuse me. I wanted to ask a couple of
11 questions.

12 What is your definition of "voter fraud"? I mean,
13 there could be -- like I could vote in the wrong precinct. Is
14 that voter fraud?

15 Non-citizen voting, that's voter fraud; but where on
16 the spectrum do you draw the line between somebody made a
17 mistake and voted the wrong ballot versus voter fraud?

18 THE WITNESS: So that question I take a whole
19 chapter in my book to discuss, but I can give you the short
20 answer which is that --

21 THE COURT: The short answer is what I'm looking
22 for.

23 THE WITNESS: I define it as the intentional
24 corruption of the voting process by voters. So it has the --
25 the element of intent is part of the definition, and very

1 importantly, for me, was to think about the perpetrator
2 because in the electoral process there are many actors who
3 have different access to different parts of the process; and
4 the best example I give, I think, is, for example, voters
5 can't corrupt the count because they don't count the ballots.

6 So I think it makes a lot of sense to distinguish
7 the different -- you know, people who have different access to
8 that process where they could corrupt the process. That's why
9 I focus on voters and, also, because the public policy
10 discussions around election integrity have very much focused
11 on voters. This hasn't been about corrupt election officials
12 or politicians, you know, running vote buying schemes. This
13 has been about access to the ballot.

14 So it's the intentional corruption of the electoral
15 process by voters is how I define voter fraud.

16 THE COURT: Thank you.

17 MR. DODGE: Your Honor anticipated some of my next
18 questions.

19 BY MR. DODGE:

20 Q. Returning to the challenges of detecting voter fraud, you
21 acknowledge some of these research challenges in your book?

22 A. Oh, yes.

23 Q. But in your view, mixed methods -- the mixed methods
24 approach permits researchers, such as yourself, to make
25 intelligent inferences about the incidence of voter fraud?

1 A. Yes, it's -- it's sort of something like, you know, the
2 preponderance of the evidence. It's across all kinds --
3 different kinds of sources that -- looking for how they line
4 up.

5 Q. You just described your definition of voter fraud to Her
6 Honor. Would you say that your definition of voter fraud is
7 generally consistent with Arizona's criminal statutes
8 regarding illegal voting?

9 MR. LANGHOFER: Legal conclusion.

10 THE COURT: Sustained.

11 BY MR. DODGE:

12 Q. Your academic definition of voter fraud would not include
13 instances of unlawful registration due to mistake or human
14 error; is that right?

15 A. That's correct.

16 Q. And why -- why don't you include those?

17 A. Well, because we have a lot of human error in election
18 administration. We have a lot of voter confusion from the
19 constant changing of the laws in recent years and, also, just
20 new people coming into the system and needing to, you know,
21 figure out how to get registered and vote and so forth and
22 follow all the rules.

23 Judge Bolton mentioned, "Hey, what if I voted in the
24 wrong precinct?" That happens, because people are confused.
25 So I -- when I -- when I'm looking at this, I often find those

1 kinds of mistakes that people are making, and that's why I
2 think it's important to try to distinguish between mistakes
3 and intentional deceit, which, by the way, is the meaning of
4 the word "fraud."

5 The Latin root of the word "fraud" is deceit. So there
6 has to be an intent to commit the fraud.

7 Q. You just mentioned that you find instances of human error
8 in your research. Is it fair to say that you don't ignore
9 this phenomenon of accidents and mistakes in the process by
10 voters in your own research?

11 A. No, in part because the method is, in a sense,
12 overinclusive. The methodology of looking at, you know,
13 everything means that I'm finding things that initially may
14 look like or be alleged to be fraud and that later through
15 investigation turn out to be mistakes.

16 Q. Are you aware of any instances of non-citizens
17 accidentally being registered to vote in Arizona?

18 A. Yes, I've seen that. I included a couple cases in my
19 book and I've seen that since -- excuse me, not in Arizona.

20 Forgive me, not in Arizona. Outside of Arizona.

21 Q. And you point to a few examples of that in other states
22 in your report?

23 A. Yes.

24 Q. So is it fair to say, just to put a pin a this, that your
25 mixed methods approach leads you to identify these instances

1 of mistaken non-citizen registration if and when they occur?

2 A. Yes.

3 Q. Okay. Let's get into your first opinion.

4 Is this slide a fair representation of your first
5 opinion?

6 A. Yes.

7 Q. I'd like to get into the sources you used, particularly
8 in this case, to reach this conclusion.

9 You've already talked about your sources a little bit,
10 but can you just briefly summarize the sources you used for
11 your mixed methods approach in this case for the Court?

12 A. Yes. So in this case I looked at -- again, looking for
13 peer-reviewed academic research, looking at government
14 studies. I included, actually, research from my book that
15 detailed a federal government initiative to try to find voter
16 fraud some years ago.

17 And then with respect to Arizona, as I mentioned, the
18 opportunity to do a case in another state means I'm gonna dig
19 into the state sources themselves; and here, in Arizona, I
20 looked at a range of issues, including materials that were
21 produced -- voluminous materials that were produced through
22 discovery, which included reports by the Attorney General's
23 office, including their complaints that came in from the
24 public through the website on the Attorney General's website
25 about, you know, inviting the public to make complaints.

1 I looked at -- you have here third-party databases
2 meaning data collected by nonprofit organizations, and I also
3 looked at lawsuits, which can be useful as well, lawsuits in
4 this case challenging the outcome of the 2020 Election.

5 Q. So let's get into the social scientific research you
6 looked at a bit and try and move through it quickly since it
7 can be a little dry, I think.

8 Can you tell the Court about the US Government
9 Accountability Office? You actually mentioned the 2014 GAO
10 audit --

11 A. Yes.

12 Q. -- is that right?

13 A. Yes.

14 Q. And you mentioned that the GAO audit identified five
15 scientifically valid studies on the incidence of voter fraud?

16 A. That's correct.

17 Q. And your book was one of them?

18 A. Yes.

19 Q. Can you describe the remaining four studies the GAO audit
20 identified for the Court?

21 A. Yes, three of them were academic articles that used
22 different quantitative method approaches; and then the fourth
23 one was a graduate journalism project at the Cronkite School
24 here at the Arizona State University in which students are
25 trained in investigative reporting and investigative

1 journalism techniques, and they take on a project for the
2 year.

3 And so about ten years ago they focused on the question
4 of voter fraud, and I know about that project because they
5 asked me to give a seminar to their students early in the
6 project about my methodology and then they -- they adopted
7 some of what I did, which had to do with Public Records
8 Request that they sent to thousands of election jurisdictions
9 in the United States.

10 Q. And what do these five GAO-approved studies, including
11 your own book, find with respect to the incidence of voter
12 fraud?

13 A. They found that the incidence of voter fraud was rare.

14 Q. Do you also rely on studies in your report that post date
15 the 2014 GAO audit?

16 A. Yes.

17 Q. And about how many of those studies do you rely on?

18 A. There are -- there were three more peer-reviewed journal
19 articles on this specific question of the incidence of voter
20 fraud.

21 Q. And what methodical approach do those studies use?

22 A. They also use quantitative research or analysis.

23 Q. And what do these three more recent peer-reviewed
24 quantitative studies conclude or find with respect to voter
25 fraud?

1 A. They also confirmed the earlier findings, mine and the
2 work of others.

3 Q. Do any of those studies conclude anything other than
4 voter fraud is isolated and rare?

5 A. No.

6 Q. And that's consistent with the conclusion in your report?

7 A. Yes.

8 Q. Are you aware of any peer-reviewed studies that
9 contradict the findings of these other materials you've been
10 describing?

11 A. I'm aware of one.

12 Q. And can you tell me about that study?

13 A. Yes, this was a peer-reviewed journal article that
14 appeared in 2014 that focused on the question of non-citizen
15 votings nationally in the United States.

16 Q. And specifically in the 2008 election, if I recall?

17 A. Yes.

18 Q. Do you discuss that article in your report?

19 A. Yes.

20 Q. At some length?

21 A. Yes.

22 Q. Can you briefly describe what that article concluded and
23 what methodology it used to reach that conclusion?

24 A. Yes. That paper relied on something called the
25 Congressional Election Study, which is an on-line survey

1 that's been done either every year, every other year since
2 about 2006 and it -- so it used that study because that study
3 included some people in it who had identified themselves as
4 non-citizens, and then there was various questions about their
5 voting behavior and so forth; and it made this sort of wild
6 claim that between 38,000 and 2.8 million non-citizens had
7 voted in the 2008 election.

8 Q. So do you find -- who's the author of that study?

9 A. The author was Jesse Richman and two colleagues, Guishan
10 Chattha and David Earnest.

11 Q. Do you find Professor Richman's study persuasive?

12 A. No.

13 Q. Can you just briefly explain what you think are the flaws
14 in his approach in that article?

15 A. Yes. I looked at that article very carefully, and I
16 looked at the survey data that they relied on; and I had some
17 problems with the way the questions had been asked that made
18 me think that people answering it could have made mistakes
19 about how they answered the questions, and I also was
20 persuaded by the critiques about measurement error and sort of
21 misreading and misunderstanding what that -- how to look at
22 that with respect to the tiny number of non-citizens that were
23 then extrapolated out to the large range that you see there.

24 Q. You just mentioned that large range of 38,000 to 2.8
25 million. What do you make of a range like that when you see

1 it reported in a study?

2 A. I mean, that's just a red flag. There's something wrong.

3 Q. Is Professor Richman's study considered reliable within
4 the field of political science?

5 A. No.

6 Q. And what do you base that opinion on?

7 A. I base it on this -- a letter that almost 200 political
8 scientists felt moved to write on their own rebuking the
9 findings.

10 Q. Have you ever seen a response to a published article in
11 your field like that before?

12 A. No.

13 Q. You mentioned some other critiques of Professor Richman's
14 article. Did his article trigger any sort of a published
15 rebuttal from others in the field?

16 A. Yes.

17 Q. And who wrote that rebuttal?

18 A. That rebuttal was written by Stephen Ansolabehere,
19 Samantha Luks and Brian Shaffner, and Stephen Ansolabehere is
20 the creator of the data. He is the one who created the data
21 and maintained the survey and worked with others, and Brian
22 Shaffner was one of the people managing it. I believe they
23 still -- Ansolabehere and Shaffner continue to oversee that
24 project. So he's kind of the political scientist who created
25 that data.

1 Q. Is Dr. Ansolabehere respected within your field?

2 A. Very respected.

3 Q. And he actually created the survey that Professor Richman
4 relied on?

5 A. Yes.

6 Q. What did Dr. Ansolabehere's paper conclude about the
7 prevalence of non-citizens voters based on the CES data he
8 helped to create?

9 A. This article was published in the same journal that
10 Professor Richman's article was published like about a year
11 later, and they concluded that, in fact, there were all kinds
12 of mistakes in the analysis and that the likely percent of
13 non-citizen voters in recent US elections was zero.

14 Q. Did Professor Richman's 2014 study generate any attention
15 during the 2016 Election?

16 A. Yes.

17 Q. And can you just briefly describe what that attention was
18 for the Court?

19 A. Well, after the election President Trump claimed that
20 three to five million, what he called illegals, had voted for
21 him in the election -- sorry, excuse me, voted for Hillary
22 Clinton, his opponent; and people associated with him cited
23 this study because Professor Richman had also written a
24 *Washington Post* Monkey Cage column in which he had discussed
25 this research.

1 Q. And just maybe to educate everyone here, what's Monkey
2 Cage?

3 THE COURT: I heard you ask that.

4 MR. DODGE: I don't know the answer, Your Honor.

5 THE COURT: I got it right.

6 THE WITNESS: In the *Washington Post* they've had a
7 column for experts to write about sort of data-based studies
8 that they've done. So it's a -- like a wonky kind of column,
9 and so I guess they were -- Professor Richman was invited or
10 maybe offered to write this column and it was about this
11 question of non-citizen voting based on his research.

12 I say that just because it had a wider audience
13 outside of the academic circles when it appeared in *The*
14 *Washington Post*.

15 BY MR. DODGE:

16 Q. And it was relied upon by supporters of the former
17 President with respect to some of his claims in the 2016
18 election?

19 A. I think so.

20 Q. Is it fair to say, then, your report sets out at some
21 length why you do not rely upon Professor Richman's study in
22 your survey of the peer-reviewed literature on the incidence
23 of voter fraud?

24 A. Yes.

25 Q. Besides Professor Richman's article, are you aware of any

1 other peer-reviewed literature suggesting voter fraud is
2 anything other than isolated and rare?

3 A. No.

4 Q. And so just to close out this discussion of the scholarly
5 literature, what do you conclude in your report based on the
6 scientifically-valid and peer-reviewed literature you reviewed
7 with respect to the incidence of voter fraud?

8 A. I conclude that it is exceedingly rare.

9 Q. Okay. Let's move on to some of the other sources you
10 relied upon here.

11 Did you look at any federal prosecution data?

12 A. Yes.

13 Q. Can you tell the Court about the Ballot Access and Voting
14 Integrity Initiative?

15 A. Yes, this was a project of former Attorney General
16 Ashcroft in the George W. Bush administration following the
17 2000 -- controversial 2000 presidential election, you know, to
18 sort of respond to concerns; and it was an initiative that
19 brought together attorneys from the civil rights side and the
20 criminal side to train them on recognizing both voter
21 intimidation and voter fraud, and so they had a series of
22 trainings for those attorneys and produced materials.

23 And the US Attorneys put out press releases at election
24 time to let the public know they're there if they have any
25 concerns, how to reach them and so forth.

1 Q. And did you have some access to some data about the
2 results of this initiative?

3 A. Yes.

4 Q. And what time period was covered by the data you had
5 access to?

6 A. 2002 to 2005, so the first three years of that
7 initiative.

8 Q. And that would have covered the 2002 and 2004 federal
9 elections?

10 A. Yes.

11 Q. Roughly ballpark, how many ballots would have been cast
12 between just those two elections?

13 A. About two hundred million.

14 Q. What did, in that time period, the Ballot Access and
15 Voting Integrity Initiative produce by way of indictments for
16 voter fraud?

17 A. It produced 95 total indictments.

18 Q. How many of those indictments actually concerned
19 individual voters?

20 A. Just 40.

21 Q. And of those 40 indictments of individual voters, how
22 many actually resulted in a conviction or a guilty plea?

23 A. Twenty-six.

24 Q. And of those 26 out of two hundred million ballots cast,
25 how many concerned allegations of voting by non-citizens?

1 A. Fifteen.

2 Q. Was the Ballot Access and Voting Integrity Initiative a
3 major priority at the Department of Justice at the time?

4 A. Yes.

5 Q. How do you know that?

6 A. I know that from interviews given by the person who was
7 the long-time head of the Elections Crimes branch, which is
8 within the Public Integrity section of the criminal division;
9 and he said that at the time that it was a priority second
10 only to terrorism and espionage for the department.

11 Q. Why is the Ballot Access and Voting Integrity Initiative
12 relevant to your analysis in this case?

13 A. Well, some people argue that the reason you're not
14 finding fraud is because prosecutors aren't prosecuting it and
15 they don't really care about it. It's low level crime,
16 they're not going to pursue it; and this was an example of the
17 federal government putting considerable resources and effort
18 to find it in federal elections nationwide.

19 Q. Did you also review a more recent GAO audit of the
20 federal government's election-related prosecutions?

21 A. Yes.

22 Q. And roughly what time period was covered by that audit?

23 A. That audit came out in 2019, and it covered the period
24 about 2000 to 2017.

25 Q. And what did that audit reflect with respect to the

1 number of election-related prosecutions the federal government
2 initiated in that time period?

3 A. That audit found -- they looked at data from the public
4 integrity section and they looked at data from the US
5 Attorneys' offices and they found very few election-related
6 prosecutions.

7 I think it was altogether -- these weren't even all
8 prosecutions. These were cases brought, and it was under 200
9 election related; but I point out in my report that there
10 isn't a way for me with that kind of data to drill down on who
11 the perpetrators were -- or at least very easily.

12 So their classification was election related, and it
13 included people who were not just voters.

14 Q. But roughly 200 or so initiated cases over that time
15 period by the federal government, both at the Public Integrity
16 section and US Attorneys' offices across the country?

17 A. That's correct.

18 Q. And again ballpark, about how many ballots would have
19 been cast in just federal elections over that time period of
20 that audit?

21 A. It was close to a billion.

22 Q. Is there any reason to think election-related crimes were
23 just not a priority for the federal government over that
24 18-year period or so?

25 A. No, and the GAO investigators asked that in people that

1 they interviewed about how did they approach the problem and
2 they -- they all said that it was, you know, something that
3 was important that they pursued.

4 Q. So we've discussed this federal data. What conclusion do
5 you draw in your report based on the federal prosecution data?

6 A. That voter fraud is exceedingly rare in contemporary US
7 elections.

8 Q. So we've now discussed academic literature and federal
9 prosecution data. Do you also look at state government
10 reports and data when assessing the incidence of voter fraud
11 in your work?

12 A. Yes, I try to.

13 Q. Can you give the Court just a brief sample of what kinds
14 of sources you might look at from state governments?

15 A. Certainly. So I've looked at legislative debates when
16 there have been bills to implement voter ID or things like
17 that. I've looked at reports that have been produced by
18 Attorneys Generals' offices. I've looked at all kinds of
19 investigations that may have occurred for one election here or
20 there in a state and, as I've said, I've had -- in
21 participating in this litigation I've had the opportunity to
22 have materials that -- have access to materials I might not
23 otherwise have that relate to state government agencies.

24 Q. So let's get into some of these state-level sources you
25 just mentioned. Did you review any press investigations into

1 reports of voter fraud at the county level in Arizona?

2 A. Yes.

3 Q. And can you describe what investigation you reviewed?

4 A. Yes, so after the 2020 presidential election, the
5 Associated Press conducted an investigation in six
6 battleground states which included Arizona, and they sent
7 Public Records requests to something like 340 election
8 jurisdictions asking for any potential cases of voter fraud
9 and, you know, what cases. Did you send any to county
10 prosecutors, and those sorts of numbers and wrote -- it took
11 them months to do and they published the report in 2021, I
12 think.

13 Q. And focusing on Arizona, how many cases did the counties
14 report referring on to prosecutors?

15 A. So the AP reported that only four counties of the fifteen
16 had told them that they had forwarded any cases to county
17 prosecutors.

18 Q. And what was the rough volume of those cases?

19 A. Roughly just under 200.

20 Q. And did any of those cases referred for further
21 investigation or prosecution concern allegations of voting by
22 non-citizens?

23 A. I don't -- no, I don't think so.

24 Q. Did you review the deposition transcripts of County
25 Records in this case?

1 A. Yes.

2 Q. And are those transcripts similar to the kinds of sources
3 you would rely upon in your academic work?

4 A. Well, they're better because they're sworn testimony.

5 So if I had interviewed all of those County Recorders, I
6 probably would have gotten less information; but, yes, I would
7 rely on that.

8 Q. And what did you conclude based on your review of those
9 transcripts with respect to the incidence of non-citizen
10 voting in Arizona?

11 A. I don't recall the County Recorders having seen
12 non-citizen voting in Arizona in recent years.

13 Q. Did any of the County Recorders identify instances of
14 non-citizen voting in their jurisdictions?

15 A. No.

16 Q. Did you review a list of election-related prosecutions
17 maintained by the Attorney General's office in your work in
18 this case?

19 A. Yes.

20 Q. And do you recall generally the time period covered by
21 that list of prosecutions?

22 A. Yes, that was 2010 'til April 2023.

23 Q. And do you know if that list is considered an
24 authoritative list of prosecutions within the Attorney
25 General's office?

1 A. That's my understanding.

2 Q. And what do you base that on?

3 A. I base that on the deposition testimony of the lead
4 election prosecutor in the Attorney General's office,
5 Mr. Lawson.

6 MR. DODGE: Can we just briefly pull up Plaintiffs'
7 Exhibit 292.

8 BY MR. DODGE:

9 Q. Is this the first page of the list of prosecutions you
10 reviewed?

11 A. Yes.

12 Q. Can you tell us what this table we're looking at shows,
13 Dr. Minnite?

14 A. Yes. So I took the Attorney General's list and I broke
15 it down in the way that I had been breaking things down in
16 terms of type of fraud and also by election year. So this was
17 the year that the fraud was -- occurred; and I should say,
18 also, these cases I also looked at what I could look at in
19 terms of court records that are publicly available.

20 So it's divided by -- or separated by the types of fraud
21 and then election year.

22 Q. And how many overall prosecutions does the AG's list
23 show?

24 A. It shows here 39, but it was 35 people because four of
25 them had been charged in two elections.

1 Q. How many convictions did the Attorney General obtain for
2 illegal non-citizen voting over that time period?

3 A. Zero.

4 Q. Do you know if the Attorney General has obtained any
5 convictions for non-citizen voting or registration in Arizona
6 since 2010?

7 A. I don't believe so.

8 Q. And what do you -- beyond this list, what do you base
9 that conclusion on?

10 A. I'm trying to get this fly away from me, but I base that
11 on the deposition testimony that I reviewed of the Attorney
12 General's office.

13 Q. And any particular individuals within that office?

14 A. Mr. Lawson.

15 Q. Do you know whether the Attorney General's office has any
16 pending charges that allege a non-citizen voted?

17 A. Yes, he testified to that in his deposition.

18 Q. How many did he testify to currently being pending?

19 A. He said there were two pending cases.

20 Q. Have either of those resulted in a conviction yet?

21 A. Not that I'm aware.

22 Q. Do you know if information regarding those cases is
23 public?

24 A. My understanding is it is not public.

25 Q. The list of prosecutions you reviewed, did that reflect

1 cases brought by other prosecuting authorities in Arizona,
2 like County Attorneys?

3 A. I don't think so. I think these are within the Attorney
4 General's office.

5 Q. And do you know if other prosecutors within Arizona have
6 obtained any convictions for non-citizen registration or
7 voting since 2010?

8 A. I'm not aware of any.

9 Q. Did you review news coverage going back to 2010 to
10 investigate that issue?

11 A. Yes, about 3,000 articles.

12 Q. Do you base that conclusion on anything else that you saw
13 in this case?

14 A. Well --

15 Q. Do you recall if any witnesses in this case testified to
16 their awareness that no prosecuting authority in Arizona had
17 obtained a conviction for non-citizen voting since 2010?

18 A. This is the Attorney General's office, yes.

19 Q. Well, you're aware that there's a report in this case
20 issued by a Professor Hoekstra?

21 A. Yes.

22 Q. Does Professor Hoekstra identify any successful
23 convictions of non-citizens for registering or voting in his
24 report in Arizona since 2010?

25 A. No.

1 Q. Does Professor Richman?

2 A. No.

3 Q. Are you aware of whether there were any convictions in
4 Arizona for non-citizen voting prior to 2009?

5 A. Yes. Yeah, I am aware of a handful of cases.

6 Q. How did you become aware of those handful of cases?

7 A. So shortly before my report had to be filed, as part of
8 the deposition of Mr. Lawson, I -- counsel shared with me a
9 document that, I guess, had been part of that deposition,
10 which was material produced by one of the people that the
11 Attorney General's office was prosecuting for having voted her
12 deceased -- recently deceased mother's ballot.

13 She was on the list -- their list and she was somebody
14 they were prosecuting, and I guess her attorney was trying to
15 get a leniency in the sentencing and had hired a private
16 investigator to look at how other people who have been charged
17 like her had been sentenced.

18 And in doing that this private investigator produced a
19 list of cases that went past 2010 -- or before 2010, and on
20 that list there were thirteen non-citizens who had been
21 prosecuted in 2007/2008.

22 Q. Do you recall who prosecuted those cases?

23 A. Yes, I think they were all in Maricopa County.

24 Q. The Attorney General's Office didn't create that document
25 you looked at?

1 A. No, it's my understanding it came from this other party.

2 Q. And the case that generated that report, it didn't
3 concern an instance of non-citizen voting?

4 A. That's correct.

5 Q. Does that document you reviewed impact your conclusions
6 at all in this case?

7 A. No.

8 Q. Why not?

9 A. It's just too few of a number of people who were
10 prosecuted. I believe some of them had come from a jury list
11 -- matching of a jury list to a registration list, but there
12 were no other cases after that.

13 Q. Does Dr. Hoekstra cite that document in his report?

14 A. No.

15 Q. Does Dr. Richman cite that document in his report?

16 A. No.

17 Q. Did you review a database of election complaints produced
18 by the Attorney General in this case?

19 A. Yes.

20 Q. And can you just generally tell us what that database
21 was?

22 A. Yes, so this was -- these were two spreadsheets that
23 downloaded data from the portal that had been on the Attorney
24 General's website for people to make complaints or, you know,
25 put in their concerns about fraud and other problems in the

1 elections.

2 So the data covered right around the time of the 2020
3 election through early of this year, 2023, and there were
4 about 4,300 complaints in those two spreadsheets.

5 Q. And who could submit complaints to that portal?

6 A. I believe anyone could have done that because they had
7 people who submitted complaints who didn't live in Arizona and
8 didn't vote in Arizona who would say, you know, "I live in
9 Iowa and I'm watching what you're doing in Arizona and I'm
10 upset."

11 Q. Could people submit anonymous complaints into that
12 portal?

13 A. Yes.

14 Q. Did any of those complaints allege that non-citizens had
15 registered or voted in Arizona?

16 A. Yes.

17 Q. Do you know if those allegations were acted upon by the
18 Attorney General's office?

19 A. It's my understanding that all of those complaints
20 received some level of review -- some initial level of review,
21 and if they merited further investigation that they were
22 further investigated.

23 Q. Do you know if any of those allegations in the portal
24 resulted in a prosecution or conviction?

25 A. For non-citizens?

1 Q. Yes.

2 A. No. I mean, I'm aware that there were none.

3 Q. And then just very briefly, can you tell the Court what
4 the Election Integrity Unit is?

5 A. My understanding of it is that it was a special unit
6 created in 2019 by the previous Attorney General who went to
7 the Legislature to get an annual funding for it and that
8 initially hired three or four people, but then relied, also,
9 on other special agents in the criminal division of the
10 Attorney General's office.

11 Q. And so that unit was provided some dedicated resources by
12 the Legislature?

13 A. That's my understanding. I reviewed documents again
14 produced through discovery regarding the funding of that
15 agency or that office.

16 Q. And in particular, in the wake of the 2020 Election and
17 the audit that was performed in Arizona of that election, in
18 Maricopa County in particular, do you know if that unit was
19 provided extra resources to investigate the issue of fraud?

20 A. Yes, my understanding is that after the State Senate's
21 forensic audit of the Maricopa County election, which
22 concluded, like, in August of 2021, that the Election
23 Integrity Unit then expanded to include all 72 agents in the
24 Attorney General's office to follow up on both those
25 complaints, but also what had been produced through this Cyber

1 Ninja Company's audit.

2 Q. And what did those efforts uncover with respect to
3 non-citizen voting in the 2020 election?

4 A. No non-citizen voting.

5 Q. Is it fair to say based on the materials you reviewed
6 that the Election Integrity Unit was highly motivated to
7 uncover instances of non-citizen voting?

8 A. Yes, the current Attorney General put out a press release
9 saying that this effort -- those dates, by the way, are off.
10 It should be October of 2021 to March/April 2022.

11 Through that period about 10,000 person hours had been
12 spent following up on every kind of allegation and every
13 alleged instance of fraud that came through the -- either the
14 portal or the Cyber Ninja's audit.

15 Q. And you just actually alluded to this, but for clarity
16 the dates on this slide are slightly off?

17 A. Yes.

18 Q. October 2021 to April 2022 would be more accurate?

19 A. That's correct.

20 Q. Okay, thank you.

21 Based on these state and county level materials you
22 reviewed, what did that suggest with respect to the first
23 conclusion you reached in your report?

24 A. Well, it, again, was an example of a concerted effort to
25 find fraud by people who have the power to find it and they --

1 there was a memorandum written by a special agent to his
2 supervisor in the Attorney General's office, Ronald Grigsby,
3 explaining what they did in this investigation that was also
4 released to the public; and in that memo Special Agent Grigsby
5 talked about how they issued subpoenas, they traveled the
6 state, they went to other states, they interviewed everybody
7 that they could where they had the information and they found
8 that these allegations were all false, that they were not --
9 they had no substance to them, no basis and no evidence.

10 Q. Did you look at any third-party databases compiling
11 alleged instances of voter fraud in reaching your first
12 opinion here?

13 A. Yes.

14 Q. And can you briefly tell the Court what databases you
15 looked at?

16 A. Yes. So the Heritage Foundation, which is, you know, a
17 major, national, nonprofit organization -- policy organization
18 which, by the way, has been a strong supporter of things like
19 proof of citizenship and photo ID and so forth, they took it
20 upon themselves to create a database -- it's available to the
21 public. It's on their website -- where they collect these
22 cases of what they call are proven fraud, and you can look at
23 that database. You can sort it by state. So I could pull out
24 all of the cases that they coded for Arizona.

25 Q. Does the Heritage Foundation disclose its methodology for

1 compiling these cases?

2 A. No, that's one of the, I guess, frustrations with it.
3 It's not exactly clear how they -- what methods they've used
4 to collect the information, but all of the cases in their
5 database are cases that have gone all the way through the end
6 of the process. So they're either guilty pleas or
7 convictions, things like that.

8 Q. So why do you rely on the Heritage Foundation database if
9 you're not sure of its methodology?

10 A. I include it because, again, of the public policy issues
11 of the position of the Heritage Foundation who -- who was --
12 for many years put out policy memos saying there's a lot of
13 voter fraud. It's a problem in American elections and, yet,
14 their own data that they pulled together does not support
15 that.

16 Q. And you think they'd be motivated to disclose these cases
17 if they were aware of them?

18 A. I -- I would think so. If they keep saying there's a lot
19 of fraud, then I would hope that they would be able to show
20 the evidence of that.

21 Q. With respect to Arizona, what does the Heritage
22 Foundation database show as far as voter fraud cases?

23 A. So they have mostly double voting cases. They -- they
24 have 28 cases in their database.

25 Q. And did any of the cases in the Heritage Foundation

1 database for Arizona concern instances of non-citizens
2 registering or voting?

3 A. None of them.

4 Q. And you also looked at a second database, right?

5 A. Yes.

6 Q. And that was the News 21 database at ASU that you've
7 already mentioned?

8 A. Yes, and this database only goes to 2012. Their database
9 goes from 2000 to 2012. Heritage Foundation, it's a little
10 hard to figure out when they started looking for cases, but
11 they only have cases from 2009 to the present.

12 So there's not a perfect alignment there, but the News 21
13 also is this different methodology that I happen to know a lot
14 about, which involved the Public Records Request as the sort
15 of foundation of their data collection effort.

16 Q. So what does the News 21 database further show with
17 respect to allegations of voter fraud in Arizona?

18 A. So the only cases that they have come from -- or overlap
19 with cases that are also in the Heritage Foundation, and they
20 only had four cases of double voting in their database.

21 Q. Did they report any additional instances or allegations
22 of alleged non-citizen voting in Arizona?

23 A. No.

24 Q. So just looking at Table 4 here, can you very briefly
25 summarize your conclusion from these two databases?

1 A. My conclusion from these two databases is that voter
2 fraud is still exceedingly rare.

3 Q. Shifting gears. In reaching your first opinion, did you
4 look at the results of any lawsuits making allegations of
5 fraud in Arizona's elections?

6 A. Yes.

7 Q. And without spending too much time on it, can you just
8 tell the Court sort of the upshot of what you found when
9 reviewing that -- those lawsuits?

10 A. Yes. So I looked at eight lawsuits that followed the
11 2020 Election. Only one of them was in Federal Court, and
12 only four of them actually made something like claims around
13 fraud 'cuz there were a lot of allegations about things having
14 to do with, you know, voting machines and ballot box stuffing
15 and so forth; but with respect to illegal voting, only four of
16 them made kind of discernible claims.

17 Q. Did any of those lawsuits present evidence of non-citizen
18 voting in Arizona?

19 A. No, none.

20 Q. Were any of those lawsuits successful?

21 A. No.

22 Q. And again, I don't want to go down any rabbit holes; but
23 did you also review public claims made by elected officials
24 claiming that there was widespread non-citizen voting in
25 recent Arizona elections?

1 A. Yes.

2 Q. Did you review any claims made by former President Trump
3 to that effect?

4 A. Yes.

5 Q. And what did President Trump claim specifically with
6 respect to non-citizen voting in Arizona in the 2020 Election?

7 A. He said that there were 36,000 non-citizen votes in
8 Arizona in 2020.

9 Q. When did he make that claim?

10 A. He made that claim in his speech on the Ellipse in
11 Washington on January 6th.

12 Q. Did that claim he made have any basis in the facts you
13 reviewed in this case?

14 A. No.

15 Q. Based on your review of the facts in this case, what do
16 you believe that former President Trump was referring to when
17 he alleged that 36,000 non-citizens voted in Arizona's
18 elections?

19 A. I think that number came from the number of federal-only
20 voters in Arizona, which at the time was being said was the
21 same number. Some people said 32,000, but 36,000 was a number
22 that a state senator told Rudolph Giuliani in a meeting in
23 late November of 2020.

24 Q. So the gist of his claim was that all these federal-only
25 voters had cast ballots and they were all non-citizens?

1 A. Correct.

2 Q. Do you know if members of the Arizona Legislature made
3 similar claims of non-citizen voting in the 2020 Election at
4 that time?

5 A. Yes.

6 Q. Was there any basis for those claims based on the
7 evidence you reviewed in this case?

8 A. No.

9 Q. Okay. So let's sort of step back for a second and just
10 sort of summarize what we've discussed here with respect to
11 your first opinion.

12 You see these sources we discussed earlier. You reviewed
13 each of these in reaching your first opinion, right?

14 A. Correct.

15 Q. And after reviewing all these different qualitative and
16 quantitative sources, this is the approach you would use in
17 your mixed methods approach in your book, right?

18 A. That's correct.

19 Q. And having reviewed all these sources here, can you just
20 again briefly summarize for the Court how they lead you to
21 reach your first conclusion?

22 A. Could you say that again? I didn't hear you.

23 Q. I apologize. Having reviewed these various sources in
24 this case, can you explain for the Court how these sources
25 lead you to reach your first opinion that voter fraud is rare

1 in the United States and in Arizona?

2 MR. LANGHOFER: Cumulative.

3 THE COURT: Sustained.

4 BY MR. DODGE:

5 Q. Let's move on to your final two conclusions.

6 This is your second conclusion, right?

7 A. Yes, and it builds on the first. It's deduced from the
8 first conclusion.

9 Q. And, basically, you're concluding that because there's so
10 little evidence of non-citizen voting in Arizona, the
11 Challenged Laws are not going to materially reduce it?

12 A. That's correct.

13 Q. And how did you reach this conclusion?

14 A. I reached the conclusion, again, by assessing the
15 evidence of non-citizen voting in Arizona and reading laws,
16 looking at the laws, looking at all of the legislative
17 debates.

18 I think I looked at, like, twelve State Senate and
19 Assembly various hearings and meetings looking to see if
20 evidence was being introduced in those legislative sessions
21 that would support the idea that the proof of citizenship was
22 needed to reduce fraud.

23 Q. Did anything in the legislative record that you reviewed
24 suggest non-citizen voting as a problem in Arizona?

25 A. No.

1 Q. Did supporter -- did any of the supporters of the bill
2 identify instances of non-citizen voting in Arizona?

3 A. No.

4 Q. Did supporters of the law express concern at the number
5 of federal-only voters in Arizona?

6 A. That was a big theme across a lot of the legislative
7 meetings and hearings. There was a lot of discussion or
8 reference to the concern that the federal-only voters were the
9 people who had not produced documentary proof of citizenship,
10 but were duly registered to vote in at least federal
11 elections.

12 Q. Does the legislative record contain any evidence that
13 federal-only voters are likely to be non-citizens?

14 A. No.

15 Q. Have you seen any evidence in this case that federal-only
16 voters are non-citizens?

17 A. No.

18 Q. Did either Dr. Hoekstra or Dr. Richman identify any
19 federal-only voters who are non-citizens in their reports?

20 A. No.

21 Q. Do you know if the Secretary of State's office has a view
22 with respect to whether federal-only voters are non-citizens?

23 MR. LANGHOFER: Relevance.

24 THE COURT: Pardon me?

25 MR. LANGHOFER: Relevance.

1 THE COURT: Overruled, you may answer.

2 THE WITNESS: The Secretary of State's spokesperson
3 publicly stated that it was just wrong to assume that
4 federal-only voters were non-citizens and that they were legal
5 voters.

6 BY MR. DODGE:

7 Q. Did Arizona have federal-only voters prior to the 2020
8 election?

9 A. Yes.

10 Q. Based on your review of the legislative record, why do
11 you think the Arizona Legislature acted on this issue in the
12 wake of the 2020 Election?

13 MR. LANGHOFER: This is an improper opinion, Your
14 Honor.

15 THE COURT: Sustained.

16 BY MR. DODGE:

17 Q. So just to recap, why do you conclude that HB2492 and
18 HB2243 will not reduce voting by non-citizens in Arizona?

19 A. Because the existing evidence suggests that it's
20 practically non-existent in Arizona with the current -- with
21 the rules that were in place prior to the enactment of those
22 two pieces of legislation.

23 Q. Okay. Let's briefly discuss your final opinion in this
24 case. What did you conclude with respect to your -- the third
25 issue you looked at in this case?

1 A. This is based on the academic research broadly on the
2 question of voter confidence and what boosts it or increases
3 it or what diminishes it, and misinformation about fraud could
4 diminish it because it suggests that the electoral outcomes
5 cannot be trusted.

6 Q. Do you reach a conclusion with respect to whether the
7 laws at issue in this litigation -- whether there's good
8 evidence to believe they'll improve voter confidence?

9 A. No, there's no research that I find that looked at
10 whether adopting proof of citizenship requirements would
11 increase voter confidence.

12 Q. Very briefly. I believe Dr. Hoekstra cites an article in
13 his report by Endres and Panagopoulos. I can spell that if
14 the reporter would like.

15 Did that report -- or study give you any pause in
16 concluding that these Challenged Laws are not -- there's no
17 good evidence to believe they'll improve voter confidence?

18 A. No.

19 Q. And very briefly can you say why?

20 A. This was a kind of an experiment done in Virginia
21 recently where the researchers worked with the League of Women
22 Voters, and they adopted a kind of experimental design where
23 they had some people in their population who received
24 postcards from League of Women Voters informing people that a
25 new photo ID requirement had been put in place, and some

1 people didn't receive that.

2 And after the election and the mailing out of these
3 postcards, they did a survey of people and they -- and this
4 survey was very problematic, but they did the survey and they
5 reported that the people who got the postcards were slightly
6 more likely to say that they didn't think any fraudulent votes
7 had been cast in that election.

8 And so it's not exactly voter confidence because voter
9 confidence is a complicated somewhat black box at the moment
10 for researchers, but it spoke to the issue of "Do you think
11 fraud is happening in the election?"

12 Q. Do the laws at issue in this case require the State to
13 mail voters postcards with information about the contents of
14 the bills?

15 A. It's not my understanding that that's a requirement.

16 Q. Do you think researchers have a perfect understanding of
17 what drives the lack of public confidence in elections?

18 A. No.

19 Q. Are you aware of any peer-reviewed papers, though, that
20 are beginning to reach conclusions about potential sources of
21 public distrust in elections?

22 A. Yes.

23 Q. Can you just briefly just tell us about those at high
24 level?

25 A. Well, there was one recently just, you know, a few months

1 ago published by a number of authors. The lead author's name
2 is Berlinsky that did actually try to look specifically at the
3 impact of misinformation about election integrity on voter
4 confidence; and they found, in fact, that it depressed voter
5 confidence.

6 Q. So before we finish up here, Dr. Minnite, I just wanted
7 to briefly give you an opportunity to respond to a couple of
8 the criticisms of your report.

9 Did you read the rebuttal reports filed in this case by
10 Professor Hoekstra and Professor Richman?

11 A. Yes.

12 Q. We've already discussed Dr. Richman a bit so let's focus
13 on Dr. Hoekstra. Have you ever encountered Dr. Hoekstra in
14 your twenty years of work on voter fraud?

15 A. No.

16 Q. Are you aware of any work he's published on voter fraud?

17 A. No.

18 Q. Have you ever encountered him at a political science
19 conference?

20 A. He's an economist, no.

21 Q. Did you know who he was before this litigation?

22 A. No.

23 Q. Dr. Hoekstra criticizes your report for not acknowledging
24 the difficulty of detecting voter fraud.

25 What do you make of that criticism?

1 A. I think that's completely wrong.

2 Q. In fact, your book acknowledges some of these challenges;
3 is that fair to say?

4 A. That's correct.

5 Q. Do you know if Dr. Hoekstra responded to your book at all
6 in his report?

7 A. He did not.

8 Q. Dr. Hoekstra and Dr. Richman also criticize your
9 definition of voter fraud for not counting for non-citizens
10 who accidentally get registered.

11 Do you think that's a fair criticism of the approach you
12 used to detect voter fraud?

13 A. No, I've tried to explain why I adopted the definition
14 that I did and why, I will also say, it's important in social
15 science to clearly define the concepts you're going to
16 measure. You have to be precise about it.

17 You have to know what you're actually looking for; and if
18 I'm looking for fraud, I'm not looking in the same way for
19 errors to be part of the measurement of fraud, although, as we
20 talked about, I see the errors. I see that as a phenomenon as
21 part of my research.

22 Q. Does Dr. Hoekstra identify any persons in his report who
23 mistakenly registered to vote as a non-citizen in Arizona?

24 A. No.

25 Q. Does Dr. Richman?

1 A. No.

2 Q. In your review of news stories about Arizona
3 elections, do you see any indication that non-citizens are
4 accidentally being registered to vote in the state?

5 A. No.

6 Q. Are you aware of any evidence suggesting there's a
7 systematic problem of non-citizens being inadvertently
8 registered to vote in Arizona?

9 A. I'm not aware of that, and I also refer to the
10 depositions of the County Recorders who didn't talk about that
11 being a problem.

12 Q. Is it fair to say that between you, Professor Richman and
13 Professor Hoekstra you were actually the only one to identify
14 any examples in other states of non-citizens accidentally
15 being registered to vote?

16 A. Yes, that's correct.

17 Q. And finally, Dr. Richman and Dr. Hoekstra allege that you
18 rely exclusively on conviction data in reaching your
19 conclusion.

20 After all we've reviewed today, do you think that's a
21 fair criticism?

22 A. No.

23 Q. And could you just briefly say why?

24 A. It's -- it's just a complete misreading of my work, and I
25 wouldn't expect Dr. Hoekstra to recognize that as easily

1 because, as an economist, he's not going to be trained in the
2 same methods; but it just ignores, you know, twenty years of
3 work that I've done on this subject to say that I only look at
4 convictions.

5 MR. DODGE: Your Honor, I will pass the witness.

6 May I bring her a bottle water before doing so?

7 THE COURT: You can hand it to Elaine and Elaine
8 will provide it to the witness.

9 MR. DODGE: That works just as well, and I do pass
10 the witness.

11 THE COURT: I have a question about your third
12 opinion, which I understand, essentially, to be that there's a
13 problem with voter confidence because of various things and
14 that these voting -- new voting laws aren't going to do
15 anything to improve voter confidence.

16 THE WITNESS: Correct.

17 THE COURT: But is the basis for your opinion that
18 the two laws won't improve voter confidence the fact that
19 there's no social science research to show that?

20 THE WITNESS: That's the foundation, because this
21 area of research on voter confidence has begun to gather a lot
22 -- or garner a lot of attention on the part of social
23 scientists and they're studying it in all different kinds of
24 ways. So there's -- we're not -- there's nowhere yet to kind
25 of bring it all together to have definitive sort of research

1 findings on it but -- but specifically, you know, I could talk
2 about many of the myriad of findings that don't quite yet add
3 up to a sort of convergence on a theory about voter confidence
4 but when people -- what some of the research shows is that
5 when people think that their vote doesn't matter, they maybe
6 have less confidence.

7 It doesn't necessarily mean that it changes their
8 behavior. They may or may not vote. Some people, for
9 example, in the research in the case of African-Americans,
10 when they have been told that their vote's being suppressed,
11 they may vote more. They may respond because of the long
12 history of voter suppression in the United States with respect
13 to African-Americans.

14 So the causal chain about what do you know, what do
15 you think, what do you do for attitudes and behavior is very
16 complicated right now; but one thing that is general -- seems
17 to be generally supported in the research is that if people
18 think that their vote is being undermined, they're gonna have
19 less confidence and they're gonna be -- they're gonna believe
20 that the elections are not producing the outcome.

21 And so the issue here, though, is -- or the
22 secondary issue is if the information people are given is not
23 true. So untrue information about fraud functions as if fraud
24 actually happened.

25 THE COURT: But that's the situation that we have

1 based on your research and your opinion, that we have all of
2 this information in the public that there's lots of voter
3 fraud, even though your research shows that there's hardly any
4 at all and with respect to non-citizens even less.

5 THE WITNESS: That's correct.

6 THE COURT: But the voter perception appears to be
7 different?

8 THE WITNESS: That's right, and --

9 THE COURT: And would you agree with me that when
10 state legislators pass laws to try to fix perceived problems,
11 they don't go to the social science research to figure out if
12 what they're doing is going to help or not help?

13 THE WITNESS: I was going to say that, you know,
14 I've never been asked to testify at one of these hearings
15 adopting a proof of citizenship or photo ID law, but what I
16 say in my report is there's an easier solution, which is that
17 people should stop lying about fraud.

18 Politicians could take the data that the Attorney
19 General's office has produced and promote that and help the
20 public understand.

21 For a long time I've called for much more
22 transparency about this issue in an effort to get it out to
23 the public to counter what happens in the political arena and
24 the manipulation of people around the idea there's fraud; and
25 I can say having studied this for twenty years, it's just

1 gotten worse and worse.

2 When I first studied -- began studying this people
3 said to me, "What are you doing?" You know, "This is not an
4 issue. You'll never get tenure. I mean, what are you
5 focusing on this for?"

6 There was no attention to it twenty years ago and it
7 has -- it expanded when Barrack Obama was elected president in
8 2008, and then it exploded after 2016. When I say "it," I
9 mean this wild perception that there's all this fraud and
10 elections are being rigged in the United States and we can't
11 trust anything.

12 So we do have that problem that you've identified,
13 that we have this perception, but it is a misperception and I
14 -- I don't know that making it harder for some portion of the
15 population to comply with the rules when they're eligible
16 voters to vote is the best way to handle it, because we still
17 have the problem of promoting misinformation about voting.

18 And politicians could -- could do this very easily
19 without passing a law. They could -- you know, any politician
20 could take it upon themselves to try to put out to the public
21 what they know, and I think that happened here in Arizona
22 after the 2020 Election with Maricopa County doing its various
23 audits and putting out reports and trying to assure the public
24 that the election in Maricopa County was run well.

25 So it's not going to be easy to give people the

1 right information but there's -- there's -- politicians have a
2 lot of sway with people. They're authoritative figures in the
3 society and when the President of the United States says this,
4 people are going to believe it. A lot of people.

5 We've never had a situation like this before. It's
6 a deep, deep problem in terms of perception. I don't -- I
7 don't see the evidence of the laws, although I'm following,
8 your -- you know, your logic that if politicians say, "Well,
9 we're doing this because we want to make it -- we want to make
10 sure there's more accuracy in the election and you can be
11 assured this will do that," that that's going to have any kind
12 of an impact on voter confidence because the problem has
13 gotten so big and it is continuously happening.

14 THE COURT: But it doesn't -- I mean, the
15 legislature may have done things that aren't going to help,
16 but that doesn't mean their motives weren't to try to help
17 with voter confidence.

18 THE WITNESS: Yeah, I'm not speaking to their
19 motives 'cuz I -- I think that's hard to discern what their
20 motives are but when -- you know, when they don't use
21 information that they have from their own Attorney General's
22 office, for example, in thinking about how they should craft
23 these kinds of laws and whether changes are actually needed --
24 for example, they have no evidence that the people on the
25 federal-only list are non-citizens, so what is the problem

1 that they're fixing with the law?

2 And if they're going on the misinformation
3 themselves, then we have, you know, kind of an even bigger
4 problem; but they're certainly in a position to do the fact
5 finding before they enact -- you know, takes an action that
6 they hint at is -- is a problem.

7 Because even if they say, "We're just trying to make
8 things more accurate," there's still the impression that this
9 is illegal behavior that's going on that we have to address
10 even if they don't accuse, you know, people of that.

11 It's a question of what was the rationale? And I
12 know we can't get in people's heads and discern their true
13 motives, but I think that the information is just so
14 overwhelming that it's not a problem -- that the non-citizen
15 voting is not a problem in Arizona, and then it goes to the
16 question of have how the rules -- what those new laws may do
17 with respect to people who are eligible citizens, making it
18 harder for them to vote.

19 THE COURT: Any other questions in light of the
20 Court's questions?

21 MR. DODGE: Just a couple, I think.

22 BY MR. DODGE:

23 Q. Is the public's -- amongst those members of the public
24 who believe there is widespread or systematic voter fraud in
25 Arizona, is that belief rooted in anything empirical?

1 MR. LANGHOFER: Foundation.

2 THE COURT: Overruled, you may answer.

3 BY MR. DODGE:

4 Q. Is that belief that there's widespread fraud rooted in
5 anything empirical?

6 A. I mean, the allegations are kind of an empirical thing,
7 but in terms of actual facts with respect to behavior, no.

8 Q. Is it fair to say, then, that belief is somewhat
9 irrational?

10 A. It's misplaced. It's misplaced.

11 Q. And so that belief is misplaced due to public claims of
12 voter fraud. Are laws like these likely to move or alter
13 those opinions that there is, in fact, widespread voter fraud?

14 A. Well, again, you know, we don't know. This would be a
15 field for research later, but it's not likely because it's
16 probably pretty unlikely that the public knows much about this
17 at all.

18 This is very in the weeds with respect to public policy,
19 and it's just not likely to have much of an impact on what
20 people think; and, again, another study that I looked at
21 recently that was also an experimental design put information
22 in front of people.

23 A lot of these kinds of studies are happening now around
24 misinformation. There's, like, new journals about
25 misinformation. Universities are creating offices -- are

1 creating initiatives to study misinformation. So they put the
2 facts in front of people and there are studies that show that
3 people actually sort of agree to the facts. They say, "Yes, I
4 recognize that's a fact, but I'm not changing my mind."

5 So -- I'm not a psychologist. I can't really get into
6 why that is working that way, those commitments either to a
7 set of ideas or a particular politician or, you know,
8 community that believes that could be playing on why people
9 say that; but, again, I want to stress this is a very
10 complicated research problem because there's the issues of
11 what do people know, how do they receive information, how does
12 that affect their attitudes, and then what's the relationship
13 between their attitudes and their behavior?

14 Those are all points at which there's research that's
15 done to try to understand, "Why can't you just give people the
16 facts and have them change their behavior?" And I would say
17 this drum beat of fraud -- and I'm in a position to know -- is
18 the drum beat of fraud that has been building for the last
19 twenty years has gone, you know, so far that it does become a
20 kind of irrational commitment, if you will.

21 MR. DODGE: I'll save any additional questions for
22 redirect.

23 THE COURT: We'll take our morning break.

24 We'll reconvene in fifteen minutes. Court is in
25 recess.

1 COURTROOM DEPUTY: All rise.

2 (Recess taken at 10:21 a.m.)

3 COURTROOM DEPUTY: All rise, court is now in
4 session.

5 (Back on the record at 10:35 a.m.)

6 THE COURT: Thank you, please sit down.

7 Mr. Langhofer, you may cross-examine Dr. Minnite.

8 MR. LANGHOFER: Thank you, Your Honor.

9 CROSS-EXAMINATION

10 BY MR. LANGHOFER:

11 Q. And good morning, Professor. I actually don't have too
12 many questions for you this morning, four or five issues I'd
13 like to explore; and I'd like to start with the definitional
14 issue of "voter fraud."

15 You've already talked about how your analysis -- to the
16 extent you're talking about voter fraud, which I appreciate is
17 distinct, to some degree, from unlawful non-citizen voting.
18 You're limiting it only to intentional unlawful voting, right?

19 A. Yes.

20 THE WITNESS: I'm sorry, could you perhaps speak up
21 just a little bit.

22 MR. LANGHOFER: Yes, I'll -- what I'm going to do is
23 move the microphone closer.

24 BY MR. LANGHOFER:

25 Q. So you -- you have written previously. In 2003 you did a

1 study for the Demos Group about what you were calling election
2 fraud back then, right?

3 A. Yes, I tend to distinguish voter fraud by perpetrator
4 component and all other forms of fraud we may see as broadly
5 election fraud.

6 Q. Yeah. In 2003 you were considering election fraud
7 defined more broadly than you're defining voter fraud today,
8 right?

9 A. Could you say again which study you're pointing to?

10 Q. Yeah. I can show it to you if you'd like, but I think
11 the Court's preference is that we start with the question and,
12 if necessary, move to the documents.

13 So in 2003 you wrote about what you were describing as
14 election fraud, right?

15 A. Yeah. Again, if you could tell me where I did that
16 because I'm -- my research evolved a little bit in the
17 beginning.

18 Q. Yes.

19 MR. LANGHOFER: Perhaps it's easier at this point if
20 we move to the exhibit. Elaine, can we have the laptop here,
21 please.

22 BY MR. LANGHOFER:

23 Q. Can you see that on your screen, ma'am?

24 A. Yes.

25 Q. Okay, great. In 2023 you were, I think, the lead author

1 for *Securing the Vote* for Demos?

2 A. Yes.

3 Q. What I'd like to do is take a look at -- we're going to
4 start with Page 10, and we're really just getting to the
5 definitional issue here.

6 So in the top left-hand corner here you wrote something
7 about election fraud. Please read that to yourself, and then
8 I'll ask you about it.

9 A. Pardon me?

10 Q. Read it to yourself, and then I'll ask you about it.

11 A. Yes.

12 Q. Okay. So in 2003 when you started writing on this topic,
13 then describing it as election fraud rather than voter fraud,
14 you did not have the "intentional wrongdoing" part of the
15 definition in your analysis, right?

16 A. It may not have been as well formed at that point.

17 Q. Yeah. And you -- the Court had previously noted that
18 when a non-citizen votes unlawfully, that would be election
19 fraud; but that's actually not consistent with your previous
20 discussions or your view now, right?

21 A. If you're asking me about the very first thing I wrote,
22 which is this report, I -- I can say as I learned, I refined
23 my definition and one of the ways in which I -- one of the
24 things I thought about was the way fraud is actually defined
25 in state law.

1 So I read every state's election code to try to figure it
2 out, and I found that almost no state has sort -- has a voter
3 fraud statute where they say, "This is what voter fraud is."

4 They define "illegal behavior," and almost all of them --
5 I can think of one exception, but almost all of them have an
6 intent requirement. They will say knowingly voted when
7 ineligible, something like that. So I think -- that research
8 probably came after this report.

9 Q. Yes, I don't disagree with what you're saying or I
10 understand your definition now to be what it is. I just want
11 to get clear that you have -- you do agree that non-citizens
12 can vote without doing it -- without doing intentional
13 wrongdoing, right?

14 A. That has happened, yes.

15 Q. Yes. And you agree that there is some level of fraud
16 that is likely to exist in any electoral system?

17 A. Some form of voter fraud?

18 Q. Some level of fraud is likely to exist within any
19 electoral system?

20 A. I wouldn't say it's likely. I would say it's possible.

21 Q. In 2003 in the Demos report, you did say those words,
22 though, right? "Some level of fraud is likely to exist within
23 any electoral system"?

24 A. If you're reading something I wrote twenty years ago when
25 I first started this research, which actually was not a

1 peer-reviewed document either, I'll attest to whatever I
2 wrote; but I think we're -- you know, I would say after twenty
3 years of studying it, I would say it's possible because I've
4 found cases of fraud, you know, since then. So it's possible,
5 but I would not say it's likely now.

6 Q. Well, I didn't mean it as a gotcha question. I'm sorry
7 if it came across that way, more in the way of clarification.

8 I understand the opinion you're offering is not that
9 voter fraud, even as you define it now, is non-existent, but
10 that it's rare; is that fair?

11 A. That's correct.

12 Q. Okay. And when you began writing about this, your view
13 was that the most common perpetrator of -- the party most
14 commonly responsible for unlawful voting actually wasn't
15 voters. It would be campaigns or political parties, right?

16 A. When I first started on this work, I had no opinion
17 whatsoever on whether there was a lot of any kind of fraud, to
18 be honest with you.

19 So I think -- I don't really try to measure other forms
20 of fraud with the precision that I've tried to measure fraud
21 committed by voters; but, as I stated earlier, given the
22 methods that I use I see almost everything.

23 So I will see, you know, a so-called rigged election or
24 an election where campaign operatives have stolen absentee
25 ballots or something like that. So I'll see all of that, but

1 I don't have a good -- I can't give a precise sort of
2 measurement of how much fraud is committed by other parties.

3 Q. I take your point but you -- as I understand your current
4 definition of "voter fraud," it does not include such
5 wrongdoing by political parties or campaigns, right?

6 A. Correct, it's focused on voter behavior.

7 Q. Yes. You'd mentioned the AP investigation into voter
8 fraud in Arizona, which I think you said 4 of the 15 counties
9 had referred something for investigation, right?

10 A. The Associated Press --

11 Q. Yes, ma'am.

12 A. -- investigation. That's what they reported.

13 Q. And you've subsequently become aware of at least one
14 county that had evidence that they didn't report back to the
15 AP, right?

16 A. In the deposition Mr. Worley shared with me some e-mail
17 for a county that had one case that they found out about after
18 they had, I guess, already -- I assume. I couldn't really
19 look at the e-mails, but I assume they had already talked to
20 the AP and said they had none.

21 Q. Okay. Let's talk about the number of prosecutions
22 briefly. You'd agree, of course, that the number of
23 prosecutions does not capture crimes that go undetected?

24 A. Correct.

25 THE COURT: We'd all agree on that.

1 MR. LANGHOFER: Thank you.

2 BY MR. LANGHOFER:

3 Q. And it would also include crimes that cannot be traced
4 back to a particular person, right?

5 A. Correct.

6 Q. And convictions, at least, don't include crimes for which
7 the mental state cannot be proven, mens rea?

8 MR. DODGE: Objection, calls for a legal conclusion.

9 THE COURT: Sustained.

10 BY MR. LANGHOFER:

11 Q. You considered prosecutions by the DOJ. It is true,
12 though, that the DOJ has a policy of not bringing prosecutions
13 when the federal interest isn't weighty enough to justify
14 their involvement, right?

15 A. My understanding is that they only bring prosecutions in
16 federal elections unless state elections somehow implicate
17 federal candidates on the ballot.

18 I know that in the Ballot Access and Voting Integrity
19 Initiative what we learned from Mr. Donsanto, who was the
20 Election Crimes Branch Director for many years that I
21 mentioned before, that what they were trying to do was to see
22 "what works with juries," were his words, in pursuing
23 individual voters, which hadn't really been the way they had
24 operated in the past.

25 They had gone after mostly vote buying conspiracies where

1 voters essentially were the victims of efforts to purchase
2 votes, and they didn't have -- they didn't have a record of
3 going after individual voters, for example, a person who had a
4 felony conviction who had not had their rights restored who
5 had voted in an election.

6 And so they were focused on that kind of fraud, felon --
7 we call it felon fraud, non-citizen fraud in Florida, felon
8 fraud in Wisconsin, double voting in Kansas and Missouri, and
9 they were trying to bring prosecutions to see if juries would
10 -- if they could convict people.

11 So they felt there was a federal interest at that time
12 with the data that I present.

13 Q. In federal elections?

14 A. In federal elections.

15 Q. Okay. You -- you did not review any deposition
16 transcripts for the County Attorneys in this case, did you?

17 A. I'm sorry, I'm having trouble hearing you, Mr. Langhofer.

18 Q. I'll do my best to speak up.

19 You did not review any deposition transcripts with the
20 County Attorneys in Arizona in this case, did you?

21 A. That's correct.

22 Q. You had testified that when you -- when you've previously
23 testified, your testimony's been found credible; and I don't
24 mean this disrespectfully. I hope you don't take it that way.

25 It is not true, though, in each of the cases which you've

1 testified previously, the Judge has found that you had offered
2 evidence that proved there was no justification for the laws
3 being challenged, right?

4 MR. DODGE: Objection, calls for a legal conclusion.

5 THE COURT: Overruled, you may answer.

6 THE WITNESS: Yeah, I'm not sure I fully understand
7 your question.

8 THE COURT: I think he's saying that the Judge might
9 have found you credible, but that doesn't mean that the party
10 for whom you were testifying won.

11 THE WITNESS: Well, all I know is from the final
12 opinions sometimes in those cases where occasionally -- there
13 may be a North Carolina case where the Judge said it, I guess,
14 essentially it was credible; but it didn't bear on his
15 decision, something like that.

16 I don't know, you know, the legal definitions of
17 "credible" and things like that, but I'm trying to understand.

18 MR. LANGHOFER: I guess just a couple more thoughts
19 about Professor Richman.

20 BY MR. LANGHOFER:

21 Q. When you talked about his article on electoral studies,
22 giving that range of 38,000 to 2.8 million, I want to say, he
23 wasn't actually asserting that 2.8 million had cast -- 2
24 million non-citizens had cast votes in America, was he?

25 A. He asserted that 1.2 million non-citizens voted in 2008,

1 the likely probability 1.2 million, which was in that range;
2 and the range was calculated by looking at it like a lower
3 bound and an upper bound and a confidence interval around the
4 upper and lower bounds.

5 Q. And Professor Richman, to your knowledge, has disavowed
6 the use of his research to make extraordinary claims about the
7 existence of election fraud in the country, hasn't he?

8 A. Who?

9 Q. Professor Richman.

10 A. Professor Richman has disavowed his research?

11 Q. No, he's disavowed people's attempt to turn his research
12 -- use his research as proof that there is pervasive election
13 fraud in the country?

14 A. I remember reading a blog on his website where he seemed
15 to be distancing himself from people he thought were misusing
16 or misreading his research.

17 Q. Okay.

18 MR. LANGHOFER: All the questions we have -- that
19 RNC at least has for this witness on cross, Your Honor.

20 THE COURT: Thank you.

21 Any other questions? Mr. Horley.

22 MR. HORLEY: Good morning, Your Honor, and good
23 to see you again Professor Minnite. My name is Tim Horley,
24 and I represent the State and the Attorney General in this
25 case.

CROSS-EXAMINATION

1
2 BY MR. HORLEY:

3 Q. As we discussed on direct, Professor Minnite, you
4 identify in your report certain instances where non-citizens
5 mistakenly voted, correct?

6 A. Correct.

7 Q. Or to put it differently, where non-citizens voted but
8 without an intention to corrupt the political process?

9 A. Correct.

10 Q. I'd like to look more closely at some of those instances,
11 and we could try to do it from memory; but if you need me to
12 pull up the report, we can do that.

13 So in your report you discussed a 1996 election in
14 California where hundreds of non-citizens were alleged to have
15 voted illegally, correct?

16 A. Correct.

17 Q. And then you note that an investigation ensued and
18 ultimately the California Secretary of State determined that
19 these voters would not be prosecuted for voter fraud because
20 there was no criminal intent, correct?

21 A. Could you give me the page number you're reading from?

22 Q. Yes, ma'am. It's at Pages 60 and 61 of your report, and
23 that's at PDF Pages 63 and 64.

24 A. Okay.

25 Q. Yeah, so PDF Pages 63 and 64.

1 A. Okay.

2 Q. Would you like me to repeat the question?

3 A. Yes, please.

4 Q. Okay. So you note that an investigation ensued from this
5 incident and ultimately the California Secretary of State
6 determined that these voters would not be prosecuted for voter
7 fraud because there was no criminal intent, correct?

8 A. Correct.

9 Q. Okay. And then looking at another incident in your
10 report, which is at PDF Page 69, or Page 66 in your hard copy,
11 you discuss an incident with a Ms. Keathley, correct?

12 A. Correct.

13 Q. And she was a citizen of the Philippines who
14 inadvertently registered to vote and voted after immigrating
15 to the United States while still a non-citizen, correct?

16 A. Yes, she had her Philippines passport with her when she
17 registered -- when she went to the DMV and somehow got
18 registered to vote.

19 Q. Okay. And this is an incident where a non-citizen
20 registered to vote by mistake, correct?

21 A. Well, she was registered by the DMV; and my
22 understanding, she wasn't seeking to register, but they asked
23 her -- under the National Voter Registration Act they asked
24 her, "Would you like to register to vote?" and apparently
25 didn't acknowledge that she had a Philippines passport and she

1 wasn't a US citizen. So that was a mistake on the part of the
2 DMV.

3 Q. And then she subsequently voted?

4 A. That's correct.

5 Q. And is your understanding that she thought she was
6 eligible because that DMV official told her that she was?

7 A. Yes, and I've seen a few cases like that before where
8 people were told by officials that they had the opportunity to
9 register to vote, got registered, and then found out later
10 that they were not eligible to do that.

11 THE COURT: So, apparently, you have the explanation
12 from what happened with this person. Did you get an
13 explanation for what happened to the several hundred people in
14 California? What was that?

15 THE WITNESS: Yes, I spent a lot of time studying
16 that because that was a contested Congressional election and
17 there was actually a task force in Congress that investigated
18 that election and then California officials investigated it,
19 and the bottom line was that these people -- most of them had
20 been working with an immigrant rights group who were helping
21 them become citizens, and a lot of them had taken the exams
22 and they'd gotten a notification from the federal government
23 that they were -- you know, "Congratulations, you're a
24 citizen. Now schedule your ceremony."

25 And it was in between the time that they had passed

1 their exam and they had actually sworn the oath that the
2 immigrant rights group was helping them get prepared to be
3 citizens and filled out voter registration forms, and those
4 forms mistakenly got sent in. They were not supposed to be
5 sent in until after people took the oath, and that was how the
6 bulk of those people ended up getting registered.

7 So they were -- you know, technically it was not
8 correct that -- it was not legal that they had been registered
9 before they took the oath itself, and that was why they didn't
10 find a criminal intent.

11 THE COURT: Mr. Horley.

12 BY MR. HORLEY:

13 Q. Yes. Just to close the loop on Ms. Keathley, voting by
14 mistake in this way caused her nearly to face deportation,
15 correct?

16 A. That's correct, and I also report a case in my book of a
17 person, similar circumstance, got registered at a DMV and
18 actually was deported to Pakistan with his American wife and
19 American-born daughter.

20 Q. And I'll try to avoid the tedium of recounting every
21 instance like this that you analyze in the report, but fair to
22 say that you describe other similar incidents in your report
23 as well?

24 A. I think just one other with a man in Alaska who similarly
25 was sent a voter registration form before he became a citizen,

1 thought that meant he could register and he voted.

2 Q. Okay.

3 A. And I would say in the Keathley case she was put in
4 deportation proceedings and was going to be deported and
5 appealed her case to the Seventh Circuit, and the Seventh
6 Circuit said that she -- they hoped that she would not be
7 deported. They found, in a sense, in her favor that this was
8 a mistake.

9 Q. Yes, understood. And just to recap your definition of
10 "voter fraud" that you testified to on direct is the
11 intentional corruption of the voting process by voters,
12 correct?

13 A. That's correct.

14 Q. And you stated on direct that this does not include
15 voting based on mistake, right?

16 A. That's correct. Mistakes are separate from deceit.

17 Q. So in your testimony when you use the phrase "voter
18 fraud," you are not referring to those instances like those we
19 just discussed a few minutes ago where a non-citizen votes
20 without any attention to corrupt the process?

21 MR. DODGE: Objection, cumulative.

22 THE COURT: Sustained.

23 THE REPORTER: I'm sorry, who was that?

24 MR. DODGE: Mr. Dodge.

25 MR. HORLEY: Could we look at demonstrative Page 9.

1 BY MR. HORLEY:

2 Q. So if you would take just a moment to review this.

3 And so in that second sentence when you say "the
4 incidence of voter fraud attributable to non-citizens," you're
5 referring to the incidence of intentional corruption of the
6 voting process by non-citizens, correct?

7 A. Correct.

8 Q. Okay. So not inadvertent voting?

9 A. Correct.

10 Q. Okay. And your report does not tell us the rate of
11 inadvertent non-citizen voting, correct?

12 A. Correct.

13 Q. Okay. And it was discussed a bit on direct, and I know
14 it was quoted in your report, some statements of supporters of
15 the Challenged Laws in this case, including Representative
16 Jake Hoffman, Senator Warren Peterson, Greg Blackie and former
17 Governor Ducey, correct?

18 A. In my report, yes.

19 Q. Yes. And is it fair to say that all those statements
20 raised concerns about non-citizens voting?

21 A. Could you help me point to where you're referring to?

22 Q. Yes, so it's Pages 53 through 55 of your report and those
23 are Pages 56 to 58.

24 A. Okay.

25 Q. Okay. And none of those statements say anything about

1 what non-citizens' intent might be when voting, correct?

2 A. They don't use the word "intent."

3 Q. And none of those statements use the word "fraud,"
4 correct?

5 A. One says, "We want to ensure that only legal citizens are
6 casting ballots."

7 Q. Okay. And you agree that it is reasonable for a state to
8 try to ensure that only citizens vote in that state's
9 elections, correct?

10 MR. DODGE: Objection, calls for a legal conclusion.

11 THE COURT: Overruled, you may answer.

12 THE WITNESS: Could you state the question again.

13 MR. HORLEY: Sure.

14 BY MR. HORLEY:

15 Q. You agree that it is reasonable for a state to try to
16 ensure that only citizens vote in that state's elections,
17 correct?

18 A. Yes.

19 Q. And do you agree that it is reasonable for a state to try
20 to prevent non-citizens from voting by mistake?

21 A. Yes.

22 Q. And you agree that it's reasonable for a state to try to
23 prevent voting by a non-citizen even when that non-citizen
24 does not intend to corrupt the electoral process?

25 A. Yes.

1 Q. And you would agree that the Challenged Laws in this case
2 could prevent non-citizens from voting, whether it is by
3 mistake or whether the voting is fraudulent under your
4 definition, correct?

5 MR. DODGE: Objection, speculation.

6 THE COURT: Overruled, you may answer.

7 THE WITNESS: It's possible.

8 BY MR. HORLEY:

9 Q. Okay. I want to go back quickly to the case of
10 Ms. Keathley that we discussed.

11 Suppose Ms. Keathley had been required to provide proof
12 of citizenship to register. Would she have been able to
13 register?

14 MR. DODGE: Objection, speculation.

15 THE COURT: Sustained.

16 MR. HORLEY: Okay.

17 BY MR. HORLEY:

18 Q. And one final question: You discussed on direct some
19 Arizonans' belief that voter fraud is widespread, and I
20 understand that you believe that those beliefs are inaccurate;
21 is that fair?

22 A. Yes.

23 Q. Are you opining that those beliefs are insincere?

24 A. No.

25 Q. Okay.

1 MR. HORLEY: No further questions.

2 THE COURT: Any additional cross-examination for
3 this witness?

4 MS. PORTER: No, Your Honor.

5 THE COURT: Mr. Dodge, redirect?

6 MR. DODGE: Very few.

7 REDIRECT EXAMINATION

8 BY MR. DODGE:

9 Q. Dr. Minnite, you were just discussing some of the
10 examples in your report of mistaken registration by
11 non-citizens. Do you recall that?

12 A. Yes.

13 Q. None of those occurred in Arizona?

14 A. They did not occur in Arizona.

15 Q. In those cases, was the mistake attributable to the voter
16 or to the Government or some sort of third-party organization?

17 A. It was not attributable to the voter in those cases.

18 Q. And in your report you give these, I think, three
19 examples you discussed with Mr. Horley.

20 Any other examples in your report, to the best of your
21 recollection?

22 A. No.

23 Q. Are you aware of a significant number of other similar
24 types of examples of these sorts of mistaken registrations?

25 A. I'm aware of other -- some other examples, but not a huge

1 number of them.

2 Q. And that's based on twenty years of looking for those
3 examples?

4 A. Yes.

5 Q. So you'd agree these sorts of instances are not common or
6 widespread?

7 A. I would agree.

8 MR. DODGE: Nothing further, your Honor.

9 THE COURT: May this witness be excused?

10 MR. DODGE: Yes.

11 THE COURT: Is there any objection?

12 MR. LANGHOFER: No.

13 THE COURT: Dr. Minnite, thank you very much. You
14 may step down, and you are excused as a witness.

15 I heard you say this was plaintiffs' final witness,
16 Mr. Dodge; is that right?

17 MR. DODGE: Your Honor, yes, this is the final
18 witness we intend to call at trial.

19 With respect to whether plaintiffs rest their case,
20 there are a couple logistical issues I would flag, but we're
21 getting there. One -- I think there's sort of three buckets.

22 One, the parties are continuing to confer on things
23 like designations and exhibits. So I ask the record be left
24 open to permit admission of those.

25 Another, Your Honor's aware that you issued a

1 discovery order with respect to discovery from the legislators
2 and the legislators have filed a Petition for Mandamus that is
3 actually being heard by a panel of the Ninth Circuit this
4 week. I think plaintiffs would also ask that the record be
5 left open specifically with respect to any future discovery
6 generated as a result of that appeal specifically on claims
7 that happen speak to the intent of the Legislature.

8 THE COURT: Go to No. 3, and then I'll tell you what
9 my thoughts are on No. 2.

10 MR. DODGE: You know what, I'm not sure what No. 3
11 is.

12 THE COURT: Oh, good, then we'll talk about No. 2.

13 Your request would not be unreasonable if the Ninth
14 Circuit issued a ruling tomorrow or Friday or even next
15 Monday; but based on my knowledge of a typical ruling by the
16 Ninth Circuit, this case is -- I can't leave the record open
17 indefinitely, again, expressing the concern that you all have
18 that I'm trying to accommodate that I decide this case before
19 the March primary election; and so, no, I can't leave the
20 record open indefinitely. I suppose it's possible to leave it
21 open for a few days, but I can't -- I don't see how we could
22 do something else.

23 No, we're not going to have multiple people
24 discussing the same issue.

25 MR. DODGE: What I can say, Your Honor -- and I -- I

1 represent clients who don't have intentional discrimination
2 claims and don't have much of a stake in this discovery.

3 Your concern is a valid one, and I think maybe the
4 parties should come up with an appropriate proposal given the
5 time frame you've raised to see the best way to address that
6 issue and allow the Court to move forward on the remaining
7 claims that don't turn on that evidence.

8 THE COURT: Yeah, I think you need to give it more
9 thought.

10 MR. DODGE: Agreed, as we so often do.

11 And I think with respect to that, we're -- we have
12 no further witnesses to call at this time.

13 THE COURT: Okay. So we're leaving the record open
14 so that the -- I think there's two outstanding items. One is,
15 obviously, the definition -- the deposition designations and
16 objections, which I'm hoping continue to shrink, and the
17 request for judicial notice.

18 MR. DODGE: That was the third, Your Honor.

19 THE COURT: Well, that's okay. I'm glad I thought
20 of it. The request for judicial notice that the defendants
21 may wish to supplement with, as I understand it, additional
22 requests for judicial notice of census data; but the other
23 reason that the record will remain open on that is because I
24 have asked you to try to treat the request for judicial notice
25 consistently and, that is, tell me what it is that the

1 documents say that you want me to look at rather than have me
2 try to figure out what those 400 and some pages mean, which I
3 anticipate would cause significant delay in any ruling by the
4 Court.

5 MR. DODGE: Heard loud and clear, Your Honor.

6 THE COURT: Okay. So with that, the defendants may
7 call their first witness.

8 MR. LANGHOFER: Thank you, your Honor.

9 So that we're clear, are those the only reason for
10 which the record is being held open on the plaintiffs' case?

11 THE COURT: I believe so. There's no, like, witness
12 that's unavailable until tomorrow. Those are the only things
13 that -- only evidentiary things that remain open are the
14 request for judicial notice, the deposition designations and
15 objections and the possibility that there might be something
16 from the Court of Appeals that would change how we close --
17 plaintiffs' close their evidence.

18 MR. DODGE: If I may raise one more, Your Honor.

19 Exhibits. There --

20 THE COURT: Oh, I always want you to -- that remains
21 -- goes without saying is that one of the things that I
22 request that the parties do in every case is to get together
23 with Elaine, who has the official list of what's admitted and
24 what's not admitted, and make sure that both sides agree that
25 what she shows as admitted you agree was admitted, what she

1 shows was not admitted was not admitted; and if there's any
2 concern about that, I can address it despite the plaintiff
3 having otherwise rested by either taking one out that I didn't
4 admit or you offering something that you forgot to offer.

5 MR. DODGE: Agreed, Your Honor, and if I can -- may
6 just add two pieces of gloss on the exhibit issue.

7 One, there are some outstanding plaintiff exhibits
8 to which defendants have no objection. We are working with
9 defendants to get those admitted, but also to streamline them.
10 That's an ongoing process.

11 I just want to confirm there's no prejudice to
12 plaintiffs submitting those before the end of trial, even if
13 we're no longer calling witnesses?

14 THE COURT: Again, I would -- there is no problem
15 with that; but, again, I would ask that you be conservative in
16 what you admit, despite the fact that there's no objection.

17 I've got so much stuff up here and the more of it
18 that's admitted -- I might sound like a broken record at this
19 point -- the longer it's going to take for me to issue any
20 final ruling in this case.

21 MR. DODGE: Plaintiffs appreciate that, and we
22 appreciate the Court's cognizance of the time frame here.

23 One other thing on exhibits. We submitted a notice
24 of exhibits we intended to move to which there are objections
25 from defendants. This was a notice. It was not a motion. It

1 was filed, I believe, Wednesday night of last week.

2 We're trying to continue to meet and confer with
3 defendants on that to see where objections can be dropped and
4 same sort of thing. We will be judicious, cognizant of what
5 is already being asked by the Court. I don't know if the
6 Court has any further guidance on how we may resolve -- where
7 there are, in fact, continuing disputes over important
8 exhibits, if the Court has guidance on how we resolve those
9 issues.

10 THE COURT: At some point you offer them, the
11 objection's made, and I rule on it.

12 MR. DODGE: Okay. Thank you, Judge.

13 THE COURT: And I mean that here in open court, not
14 in memoranda filed that I look at without having an
15 opportunity to talk to you.

16 MR. DODGE: Appreciate that, Judge.

17 THE COURT: Okay.

18 Mr. Langhofer, would you like to call a witness.

19 MR. LANGHOFER: Yes, your Honor, the defense calls
20 professor Mark Hoekstra, and I'll note that the -- not like
21 the plaintiffs, the defense isn't planning to call witnesses
22 -- you know, all RNC witnesses and all the State witnesses,
23 we'll call them in the order that they're available, as long
24 as that's acceptable to the Court.

25 And later today we may have to interrupt Professor

1 Hoekstra's testimony after lunch in order for get a relatively
2 quick witness in and out for scheduling purposes if it suits
3 the Court.

4 COURTROOM DEPUTY: Come here over and raise your
5 right hand for me.

6 *(Witness is sworn.)*

7 COURTROOM DEPUTY: Thank you.

8 Can you please state your name and spell your last
9 name for the record.

10 THE WITNESS: Mark Hoekstra, and the last name is
11 H-o-e-k-s-t-r-a.

12 COURTROOM DEPUTY: Thank you, and you can go ahead
13 and have a seat.

14 THE COURT: You may proceed, Mr. Langhofer.

15 MR. LANGHOFER: Thank you, your Honor.

16 DIRECT EXAMINATION

17 BY MR. LANGHOFER:

18 Q. Good morning, Professor Hoekstra. Please take a moment
19 and introduce yourself to the Court.

20 A. Yeah, my name is Mark Hoekstra. I'm a Professor of
21 Economics at Baylor University.

22 Q. And, Professor Hoekstra, please tell us about your
23 educational background.

24 A. Yeah, so I did a Bachelor's degree in Economics, minor in
25 Math at Hope College in Michigan. I did my Ph.D. in 2006 at

1 the University of Florida; and from there on my first job, it
2 was an assistant professor and we can go from there.

3 Q. Where were you assistant professor first?

4 A. Yeah, my first job was at the University of Pittsburgh.

5 Q. How long were you there?

6 A. I was there five years.

7 Q. And were you on a tenure track position?

8 A. I was.

9 Q. What'd you do after leaving the University of Pittsburgh?

10 A. Yeah, so at the time I left I was offered tenure at both
11 University of Pittsburgh and Texas A&M. I moved to Texas A&M
12 where I was an associate professor with tenure, eventually
13 promoted to full professor for the twelve years I was there.

14 Q. Where are you now?

15 A. As of August 1st, I'm at Baylor University.

16 Q. What position do you hold there?

17 A. I'm the George J. Boden Professor of Economics, which is
18 an endowed professorship from the business school at Baylor.

19 Q. All right. Have you authored any peer-reviewed scholarly
20 articles?

21 A. Yeah, so I've published roughly 20 peer-reviewed articles
22 over the years in various journals; but including, you know,
23 the very top journals in economics.

24 Q. Which -- which journals are you referencing are the top
25 journals?

1 A. Yeah, so the top journal is the American Economic
2 Association. It's called the *American Economic Review* and --
3 and that's one of, you know, what's called the top five
4 journals in economics. In general, if you're kind of a young
5 researcher and you publish in a journal like that, it more or
6 less makes your career.

7 I've published there twice. From there, there's also we
8 consider A-minus journals like *American Economic Journal*,
9 *Applied Economics*, *American Economic Journal*, *Economic Policy*,
10 which are also AEA journals and -- and others.

11 Q. All right. I'm not asking you at this point to discuss
12 the details of your publications, but on what sort of topics
13 have you been publishing?

14 A. Yeah, so I started out doing research in education first,
15 looking at various questions within education. I've done a
16 few things, you know, here and there on other topics.

17 Most recently I've been working more on crime and things
18 like the role of race in police use of force and testing for
19 gender bias among -- among juries and so on.

20 Q. Have you published on voter ID issues?

21 A. I have. So I've published one paper on, essentially,
22 what is the maximum -- the maximum potential impact of
23 transitioning from a non-strict identification law to a -- to
24 a strict identification law.

25 Q. Do you hold any research appointments?

1 A. I do. So I hold one research appointment. I'm a
2 research associate at what's called the National Bureau of
3 Economic Research, which is based out of Cambridge. It has
4 big ties to Harvard and MIT.

5 It's -- the best way to describe it is it's basically
6 like a club for economists, and so in order to get into the
7 club you need to have powerful people in your field advocate
8 for you and say, "We think this person is good and they ought
9 to be an NBER." Then you get invited to the conferences.
10 Your papers get disseminated by NBER to media outlets and
11 everybody else and so on.

12 THE COURT: Could I interrupt a minute?

13 MR. LANGHOFER: Of course.

14 THE COURT: I have this idea of what an economist
15 is, and my idea didn't include things like when you were
16 talking about working on educational issues, working on things
17 doing with crime, things doing with gender, things doing with
18 voting.

19 THE WITNESS: Sure.

20 THE COURT: Could you maybe broaden my understanding
21 of what an economist does?

22 THE WITNESS: Sure. I mean --

23 THE COURT: Or a professor of economy, I guess I
24 should say.

25 THE WITNESS: That's right, sure. So I think one

1 way to think about it is, you know, we have, I think, a pretty
2 advanced tool set for trying to get at causal questions; and
3 while there are lots of typical economics questions,
4 economists also take those sometimes, you know, outside of
5 what you might consider to be economics and answer those as
6 well.

7 And I think, essentially, we just have a -- I think
8 it's fair to say we have a more rigorous way of assessing
9 causality and trying to figure out, you know, is A causing B
10 as opposed to some other interpretation.

11 Within -- with respect to some of these other
12 things, for example, the voting question, right, at the end of
13 the day, you know, a lot of these things are about marginal
14 benefits and marginal costs; and so you say if I increase the
15 marginal cost, the additional cost facing a prospective voter,
16 does that matter?

17 And that's -- I mean, fundamentally that's Econ 101,
18 right, is you compare -- we think people compare marginal
19 benefits and marginal costs, and that's how they make
20 decisions; and here we're just trying to quantify that in the
21 context of voting.

22 Within education, obviously, education -- one of the
23 reasons for getting educated is you learn more, you acquire
24 human capital and, therefore, you can earn more later on; and
25 so then there's the question of, well, what are those returns

1 and what are the returns to going to school for longer or
2 going to a better school? And those questions, like many in
3 social science, are hard to answer; and, again, we have this
4 tool set for trying to answer those in a careful way.

5 BY MR. LANGHOFER:

6 Q. Let me -- since Your Honor's asking, let me jump around
7 somewhat in my outline. I want to sort of ask you to explain
8 the methods you would use in one of these publications you've
9 been talking about.

10 Why don't we do the gender bias in juries. I don't think
11 we need detailed explanation, but talk through the methods so
12 we have a better sense of what economic research like that
13 does.

14 A. Yeah, so -- so we have a project on testing for gender
15 bias by juries. One of the difficulties is that if you were
16 to just compare across, say, male defendants and female
17 defendants, those individuals, those cases might be different
18 in all kinds of ways, including ways that I don't see in the
19 data, right.

20 And so what we do instead, then, is we say, "Well, let's
21 also use the fact that some juries are -- are more male and
22 some juries are more female and let's see whether the more
23 male juries tend to favor the male defendants; and, of course,
24 the problem with that is, well, there's a jury selection
25 process, right.

1 And so the composition of that seated jury is the result
2 of all these attorneys and people like you having say over who
3 gets struck and who doesn't, and so the way we go about trying
4 to solve that problem is we say, "It's true that the seated
5 jury isn't random, but the panel from which those people were
6 selected is random."

7 And so I don't know how it works in Arizona, but in
8 Florida, essentially, you get numbered from, say, 1 to 30 and
9 you're gonna take the first six jurors if they don't get
10 struck. Sometimes, maybe, four or five of those six will be
11 women. Sometimes, maybe, four or five of the six will be men,
12 and that's going to end up having an impact on the final jury
13 composition; and so that's the coin flip, like that's the
14 randomization that we're going to use to identify, you know,
15 the interaction between defendant gender and jury
16 composition -- the gender composition of the jury.

17 Q. You had described a research appointment with the
18 National Bureau of Economic Research.

19 Do you have any other research appointments?

20 A. I do. So I have an appointment with what's called the --
21 I believe it's called the Institute for Labor Studies. It's
22 IZA in German. So, essentially, it's -- it's more or less the
23 European NBER is the simplest way to describe it.

24 Q. Do you hold any editorial positions?

25 A. I do. I'm an Associate Editor at the *Journal of Labor*

1 *Economics* and the *Journal of Human Resources*, which are
2 essentially the top two field journals in my field, which is
3 labor economics.

4 Q. Have you won any awards?

5 A. I have. So I won a Young Labor Economist award from IZA,
6 which, again, is this European NBER, this club, right; and I
7 also won a Graduate Mentoring Award, a university-level award
8 from Texas A&M.

9 Q. What is a Graduate Mentoring Award based on?

10 A. It's based on, essentially, excellence in advising
11 students. You know, I think a little bit as human beings, but
12 also preparing them to be, you know, successful researchers;
13 and my students have gone on to good research universities.

14 Q. You mean your Ph.D. level --

15 A. My Ph.D. students have gone on to have good -- yeah, good
16 jobs.

17 Q. I want to talk about the classes that you teach and the
18 research that you've advised and supervised.

19 Have you ever taught a class on econometrics?

20 A. Yeah, so my -- so last spring I taught part of the first
21 year sequence in econometrics, which is a fancy word for the
22 application of statistics to economic problems, and
23 specifically the part of the course that I taught was on
24 causal inference, which is, again, you know, suppose two
25 factors are correlated. What makes us -- you know, how can we

1 try to figure out whether A is causing B or some other
2 explanation is driving things?

3 And there are various methods that economists use,
4 occasionally randomization, sometimes randomized control
5 trials, and we talk about how that solves, you know, basically
6 the math or how that solves the problems; but also other
7 strategies that get used, which we'll probably talk about
8 today, things like difference-in-differences, regression
9 discontinuity and so on.

10 Q. Yes, we'll get there, I'm afraid.

11 THE COURT: I can't wait for regression
12 discontinuity.

13 THE WITNESS: Oh, it's pretty pictures. You're
14 gonna love it. It's great.

15 BY MR. LANGHOFER:

16 Q. The econometrics course that you taught, is that an
17 undergraduate or graduate level course?

18 A. Yeah, that was a first year Ph.D course. So this is the
19 year that anyone who wants to -- or this is a course where
20 anyone who wants to get a Ph.D. in economics, they need to
21 take this; and then there's a -- they need to pass the class,
22 but they also need to pass an exam at the end of the -- the
23 first year and that's typically kind of a big weed-out exam.

24 It's called the qualifying exam, and so I had to write a
25 question, you know, for that that determines whether they get

1 to stay on track to get a Ph.D. or not.

2 Q. Have you taught Ph.D. level courses in public economics?

3 A. I have. So I've -- I've taught mostly every year a
4 course, which is a second year course. So once students focus
5 on some areas, they'll take that course; and mostly what I do
6 there is we focus on how economists have applied these various
7 methodologies, mostly not randomized control trials, mostly
8 things with observational data to get at causality and a range
9 of questions: education, health, crime, occasionally some
10 voting-related stuff, occasionally some industrial
11 organization-type stuff and so on.

12 Q. What about bias?

13 A. Yeah, interracial bias is a big part. So I'm a labor
14 economist, and one of the big questions in labor for decades,
15 right, is is there racial discrimination in different
16 contexts? And so we -- we have to think carefully about how
17 do we test for that. How do we rule out alternative
18 explanations, and how do we measure it and so on.

19 Q. Have you taught a course in research methods?

20 A. I have. So at the undergraduate level I've taught a
21 course on research methods, which is, you know, a simplified
22 version of what I'm doing at the graduate level.

23 Q. Let's talk about the Ph.D. research that you've
24 supervised. Can you talk us through the topics that you've
25 supervised?

1 A. Yeah, so in general I -- you know, I think, as you can
2 see from my CV, which struck you as somewhat -- you know,
3 somewhat unusual, like I'm -- I'm interested in a wide range
4 of questions and I -- I think many of us in economics view the
5 world as we have a tool set and we can go use that to answer a
6 variety of questions.

7 So, you know, most recently my students have been working
8 on crime, racial bias-type stuff; but perhaps most relevantly
9 and this just occurred to me the other day is, you know, one
10 of the -- one of the best studies I think one of my students
11 did was on looking at what happened when you -- when the
12 Philippines implemented safeguards to reduce election fraud.

13 So they had -- I think anyone would agree they had big
14 problems with election fraud. They introduced some systems to
15 reduce that. She went and documented that it reduced fraud,
16 and there's various ways of doing that, and then looked at
17 whether this changed, you know, how government operated,
18 measure of corruption, that sort of thing.

19 Q. It wasn't your research, though, you were just
20 supervising?

21 A. That's right. I supervised her dissertation. That was
22 one of her papers.

23 Q. Do you serve as a referee for the publications of other
24 scholars?

25 A. Yeah, so roughly twenty a year probably I'm reviewing

1 papers. So you submit a paper for publication. It goes out
2 for peer review. I'm a peer reviewer roughly twenty times a
3 year.

4 Q. What topics?

5 A. Again, it would be primarily the topics that I write on,
6 but sometimes it would be -- it would be other topics; and,
7 again, like yesterday, I have a hard time remembering these
8 things because I do twenty of them a year and, you know,
9 they're in and out. You forget about them, right, but I --
10 you know, I did a review for the *Journal of Political Economy*,
11 which is one of these top five publications, a really big deal
12 for anybody, but especially for a young scholar to publish
13 there.

14 I reviewed a paper looking at the impact of income shocks
15 on the incumbency advantage and whether -- and, essentially,
16 why there's an incumbency advantage when the economy is good,
17 and I reviewed that. That paper was ultimately published in
18 the JPE, and I cite it in one of my reports.

19 Q. The articles that you review for -- that you referee for
20 publication, do they include racial bias?

21 A. They do, for sure.

22 Q. Have you previously served as an expert witness?

23 A. I have.

24 Q. Where?

25 A. So I -- I've served in -- the first case I ever took was

1 this Texas case on S(b)(1).

2 Q. What's S(b)(1)?

3 A. So S(b)(1) was an election restriction that essentially
4 made it -- it introduced some safeguards to the absentee
5 voting process, right. So, among other things, people had to
6 write down an ID number when they voted. That ID number had
7 to match in order for their vote to count, et cetera.

8 So that was the first case I took. That was, I guess,
9 just concluded; and then I've also served as an expert witness
10 actually here in Phoenix for the Attorney General's office on
11 a criminal case. It was a death penalty case about racial
12 disparities and whether those racial disparities were due to,
13 you know, racial bias or something else.

14 And then I've served as either an expert witness or a
15 consulting expert on a variety of criminal cases in
16 California, most of which, again, are about the absence or
17 presence of racial bias.

18 Q. And how many of those cases have you actually testified
19 in?

20 A. So I testified in the death penalty case here in Arizona.
21 I testified in the case in Texas on elections on S(b)(1). I
22 have not testified in these cases in California. I don't know
23 if I will or not. They're at various stages. To be honest,
24 I'm not sure where they're at.

25 Q. And was your testimony accepted as expert opinion in

1 those cases -- the two cases?

2 A. Yeah, it was definitely accepted in Texas and I believe
3 they tried to -- they tried to have me excluded in Arizona.
4 The Judge said she took it under advisement, but I believe she
5 accepted it.

6 Q. Okay. So zooming out somewhat, what are the
7 qualifications -- like what are the key skills for success in
8 daily economics, as you've described?

9 A. Yeah, so one of the things that -- essentially, what
10 you're trying to do as an academic is you're trying to answer
11 questions better than anybody else has ever answered them,
12 right, and you're competing against a lot of smart people.

13 And so one of the things that you've got to do is you've
14 typically got to assemble really good data sets. So that
15 might mean -- in the context of policing it means you're
16 pulling really large, sometimes messy administrative data sets
17 from police departments. You're often linking them together.
18 So you're linking things like officer race to use of force to
19 a 911 call, for example.

20 Then you're gonna think, you know, really carefully about
21 what is it that you're measuring? You know, if you're looking
22 at the impact of -- or at whether race matters, you want to
23 think about what could be driving these differences and so on.
24 You're gonna think really carefully about research designs
25 that get you at causality, like what is the best way to answer

1 this question? How would I go about doing it? What kind of
2 data would I need to do it?

3 And again, our success is determined by how well you do
4 those things; and if you don't do them very well, you either
5 don't have a very good job or you have to find a new job; and
6 if you do them well, then life is better.

7 Q. What were you asked to do in this case?

8 A. I was asked to read, analyze and respond to the reports
9 of Professor Burch, Professor McDonald and Professor Minnite.
10 I was also asked to respond -- to analyze and respond to
11 another expert, although my understanding is that expert is
12 not here, Professor McCool.

13 Q. And let's talk through your process as you were preparing
14 your opinions in this case.

15 What did you do? How did you begin?

16 A. Yeah, so you'd begin, you know, roughly the same way
17 you'd begin thinking about, you know, reviewing a paper or
18 anything else or even doing -- doing your own research.

19 So first I'm reading the reports. I'm trying to
20 understand -- as I read them, I'm trying to understand what
21 are the research questions that they're trying to answer. As
22 they -- you know, throughout their report; and then I'm trying
23 to assess the credibility of the evidence and -- and, you
24 know, what kind of research designs are these studies using?
25 What kind of approaches are they using to get at causality,

1 and what are the assumptions that underlie those and what can
2 we say about the likelihood that those assumptions are -- are
3 going to hold versus not.

4 Q. Did you look at the sources that were relied upon by the
5 plaintiffs' experts?

6 A. Yeah, so that's -- that's certainly a big part of it is
7 assessing -- you know, looking at those studies that they're
8 citing and figuring out what is it that they were doing, what
9 question were they trying to answer, which in some cases was
10 different than how they were being cited by the experts; and
11 then how do they go about trying to answer that and is that a
12 credible approach or -- or not.

13 Q. I don't want to repeat what we've already trowed, but is
14 this process you've just described a process with which you
15 have experience?

16 A. Certainly. So when you advise a student and they're
17 thinking about ideas, you're gonna say, "Okay, what's the best
18 study? What are the studies that are out there on that
19 topic?" And in that context you're gonna say, "Okay, what are
20 the problems with those studies and what can you do better?"
21 and that's going to involve evaluating, you know, how good
22 that other research is, as well as evaluating the proposal of
23 what the student is proposing to do.

24 When I review papers, you know, either as an editor or as
25 -- as a -- just a reviewer for a journal, you're gonna do the

1 same thing. You're gonna say, "How good is the evidence out
2 there generally on this question?" in order to figure out what
3 is the value added of this study and -- and how -- you know,
4 how credible do I believe the results -- will the readers of
5 this journal believe the results of this -- of this study; and
6 then, of course, I'm gonna do it in my own research as well
7 where you say, "Okay, I want to answer this question better
8 than anybody else. What's the best evidence out there? How
9 good is it? What are the problems with it? And can I do
10 better than that?"

11 Q. We're going to talk in a bit about
12 difference-in-differences and regressions; but at a high
13 level, this process you've described of going through reports
14 and analyzing them, is that common in your field?

15 Is that accepted method in your field?

16 A. Yes, it is.

17 Q. Professor, let's talk about causation. What is the
18 difference between -- is there a difference between
19 correlation and causation?

20 A. Certainly, and, you know, distinguishing between those is
21 more or less how people like me have made our livings for a
22 couple decades.

23 In general, if two things are correlated, it could be
24 that -- if A and B are correlated, it could be that A causes

25 B. You know, it could be that B causes A. Could be there's

1 reverse causation. It could be that there's some other factor
2 that's perhaps driving both of these things and, you know --
3 and good research, reliable research is proposing, you know,
4 good strategies for distinguishing between those various
5 interpretations, and that's a simplification in any context.
6 We -- we can say more, but that's what we're doing.

7 Q. What's the gold standard in academic studies attempting
8 to prove causation?

9 A. Yeah, the gold standard is going to be randomization,
10 right. So this is -- this is why the FDA is -- before a drug
11 comes to market they're going to require that that drug
12 company, you know, do a randomized control trial because
13 that's the best way to get at causation.

14 Now, you can't always do randomized control trials but
15 that's -- that's the model that we have in our head of, you
16 know, what can I do that comes as close as possible to this
17 first best approach.

18 Q. Is it possible to establish a causal connection without a
19 randomized control experiment?

20 A. It certainly is. You know, depending on what we're
21 talking about, it requires some assumptions. Obviously, some
22 assumptions are more reasonable than others, but in some cases
23 we'll find something that's exactly equivalent to a randomized
24 control trial out in the wild.

25 Q. So I'd like to, you know, give an illustrative example.

1 You and I have previously discussed Air Force Academy
2 assignments. So just -- I don't think we want something
3 extraordinarily lengthy on this, but talk the Court through
4 that study and how you may be able to prove causation without
5 randomized control experiment.

6 A. Yeah, so in one of those studies we're looking at whether
7 -- whether you're impacted by the fitness of your peers; and
8 so if you hang out with people who are, you know, physically
9 fit, does that cause you to become more physically fit?

10 The reason that's a hard question to answer is, well, you
11 probably choose who you hang out with; and so maybe you hang
12 out with other fit people because you like to exercise. Well,
13 that doesn't mean they're causing you to be fit, right? And
14 there's other -- there's other things that can go wrong with
15 that as well.

16 The way that we got around that is we looked in a context
17 where people actually didn't have so much choice in who they
18 hung out with. So at the United States Air Force Academy, in
19 the first year you get what's called stratified randomly
20 assigned to different squadrons and so, essentially, those --
21 some people are going to happen to land in a squadron that has
22 lot of fit cadets and some people are going to land in a
23 squadron that has less fit cadets and then we can -- we can
24 examine how -- you know, does that impact your fitness levels
25 while you're at the academy, and it gets around all those

1 problems of people choosing who they hang out with.

2 Q. Have you also applied that method at the Air Force
3 Academy to looking at issues of race?

4 A. Yeah, we have. So we've looked to see -- there's this
5 hypothesis that goes back to, I think, 1953 with somebody
6 named Allport that says under some conditions if you have
7 people from different groups interact with other people, you
8 can cause them to have more positive impressions of each
9 other, right, and -- and it's hard to test that because mostly
10 people choose who they hang out with again; and so, again, we
11 use the Air Force Academy context to do it.

12 It turns out some cadets are randomly assigned to
13 squadrons with more black cadets or with higher ability, like
14 higher academic ability, black cadet versus lower; and then we
15 look at does that impact your behavior toward new and
16 different black cadets in the second year, and the measure
17 that we're using is do you pair up with a black roommate or
18 not; which is a measure of, like, you know, trying to get at
19 how comfortable are you with that group, how much do you like
20 that group and so on.

21 Q. All right. I want to just present squarely an idea and
22 let you respond to it if you haven't already.

23 The idea is political science does not allow researchers
24 to prove causation because you can't conduct
25 randomly-controlled experiments. Do you agree with that?

1 A. No.

2 Q. Okay. Let's talk a bit about the cost of voting theory.
3 You're familiar with this by now?

4 A. Sure.

5 Q. And documented proof of citizenship, which I will
6 probably call DPOC sometimes, and in your -- in preparing your
7 opinions in this case, were you able to find any situations
8 that are identical to the laws that are being challenged here?

9 A. So there's no -- there's no context where -- where both
10 the treatment and the outcome are exactly the same, so where
11 the laws are the same and we're looking at, say, voting
12 outcomes.

13 The study that I think is most relevant with respect to
14 the citizenship requirement is a study on what happened when
15 Medicaid -- when Medicaid required proof of citizenship
16 starting, I believe, in 2006 and looking at the impact of that
17 requirement on -- on participation in Medicaid among both
18 citizens and non-citizens.

19 Q. And you became aware of this issue in reviewing Professor
20 Burch's report?

21 A. That's right.

22 Q. And what was your reaction upon reading the GAO study
23 that Professor Burch relied on?

24 A. Yeah, so Professor Burch made a big deal out of this --
25 this GAO -- I mean, "study" is like an optimistic

1 characterization of it, but this GAO report; and this GAO
2 report essentially consisted of the government going and
3 asking these state Medicaid officials like, "Hey, what was
4 your impression of the impact of this requirement on
5 enrollment? And what's your impression -- did these people
6 who you think maybe are no longer being enrolled, did they
7 appear to be citizens or not, whatever that means, right.

8 And so I read that, and I thought to myself, like, this
9 policy happened in 2006. There are lots of ambitious people
10 trying to write papers on, you know, topics like this. I find
11 it hard to believe that nobody's actually studied it, and so I
12 did a search and like a minute later you find a paper that's
13 published been by a Harvard professor in *Journal of Public*
14 *Economics*, which is like a top field journal in economics.

15 It'd count for tenure, basically, at every university in
16 the country; and he used one of the common designs that
17 economists use to look at -- to look at this question.

18 Q. We're gonna take a look at some of the studies that you
19 reviewed.

20 MR. LANGHOFER: Elaine, would it be possible to
21 share the -- thank you.

22 BY MR. LANGHOFER:

23 Q. So we're talking about -- you're talking about targeting
24 in Medicaid, that article by Professors Sommers?

25 A. That's correct.

1 Q. Okay. What is the -- I think you've already described
2 the GAO method. The Court's already heard a bit about that.

3 What is the method that Professor Sommers used to
4 evaluate the DPOC requirement?

5 A. Yeah, so one of -- one of the common methods, one of the
6 things, for example, that I taught in that first year
7 econometrics course is what's called
8 difference-in-differences.

9 What it does is it says, "Well, we have some states in
10 here" -- I believe it was 40-some states -- "where from before
11 this policy to after the policy the policy changed things,"
12 right.

13 So you went from a world where you didn't have to provide
14 documentation of citizenship to now you do, but then we
15 have -- and those states you can think of as the treatment
16 group, but then we have four states in this case where they
17 already had that requirement in place even before this federal
18 requirement happened, and so those states nothing changed,
19 right.

20 Like, other things changed, obviously, but the policy
21 about citizenship documentation didn't change; and so what you
22 do is essentially you look to see, okay, how much did Medicaid
23 enrollment change in the treatment group? And what you --
24 what you pick up when you do that is, well, you probably pick
25 up the impact of the policy; but, of course, other things can

1 change over time as well. And so then what you say is, "Well,
2 I really only want the impact of the policy. Not the impact
3 of, you know, just other things that change over time."

4 And so then what you do is you say -- you take that
5 difference and subtract off what happened in the control
6 states from before versus after the policy, because in those
7 states things changed over time but the policy didn't; and so
8 when you take the difference of these two differences, under
9 some assumptions you pick up the -- you pick up the causal
10 effect of the policy itself, and that's a pretty common design
11 in economics.

12 It's considered to be reliable if you execute it well,
13 and if the assumptions, you know, seem like they're likely to
14 hold, which in that paper they do and we can talk about that.

15 Q. All right. I'd like to show you a chart from the paper
16 you're talking about -- a table rather, and here we go.

17 I've called out this -- these tables on the left. Can
18 you start by talking about the top of these two charts,
19 please.

20 A. Yeah. So, essentially, what it's -- what it's showing is
21 it's showing the -- I believe this is the Medicaid enrollment
22 rate on the vertical axis, on the Y-axis, and showing that
23 both for the treatment states -- and these are the states that
24 went from a world where there was no citizenship
25 requirement -- or no citizenship documentation requirement to

1 a world where you had to prove documentation with -- you had
2 to prove citizenship with documentation.

3 And then we have the control states, which are those
4 states where that policy just didn't change over that time
5 period, and the first thing that you want to look at on a
6 diff-in-diff to see whether it's a good study is you want to
7 look at what's going on in the pre-period, and there's an
8 assumption in difference-in-differences that's called parallel
9 trends.

10 And what that means is we'd really like those two lines
11 to be parallel in the pre, because what we're assuming is that
12 that difference would have been the same in the post period as
13 it was in the pre period; and to the extent that that's not
14 even true in the pre period, then we worry about whether
15 that's going to be true.

16 And so the way that we teach people to do research is
17 before you even look at what's happening after the policy,
18 look at what's happening before and does it look like, you
19 know, you have -- like your assumption is holding, and here it
20 does.

21 And then if you look in the post period, what you'd be
22 worried about is a drop in the treatment group relative to the
23 control group. You'd be worried about, you know, now all of a
24 sudden citizens have this requirement and they drop off of
25 Medicaid in these states that now -- you know, that now forced

1 them to provide documentation, and you don't see that.

2 Instead, it looks like they just continued to cruise
3 along the way that they were doing. The difference is
4 basically constant from the post to the pre.

5 Q. Okay. The differences that Professor Sommers published,
6 were those statistically significant between the treatment
7 state and the control state?

8 A. For citizens they found no effect. So they found that
9 this requirement had no effect on Medicaid enrollment of
10 citizens.

11 Q. And what about for non-citizens?

12 A. Yeah, so if you look at the bottom again, if you look at
13 the left-hand side, it looks like the design is performing
14 pretty well because those -- those two groups seem to track
15 each other pretty well in the pre period. When one goes up,
16 the other goes up by about the same amount and so on; but then
17 if you look in the post period, what you see is, well, maybe
18 there's not such a big difference right away in 2007, but in
19 2008 it does look like there is this divergence.

20 And so, essentially, you know, in these states where
21 there was no requirement, they saw an increase in enrollment
22 rates among non-citizens; but in the states where there a
23 requirement, they didn't see that.

24 And so when they estimate this, which you can do with,
25 you know, typical statistical tools, they're gonna estimate

1 roughly a two to three percentage point reduction in the
2 Medicaid enrollment rates of non-citizens. So it reduced
3 enrollment by non-citizens, had no affect on the enrollment
4 rates of citizens.

5 Q. All right, and here we go. Bear with me one moment,
6 please. All right, and we're back.

7 So the -- did you find a -- any other studies that you
8 thought were more analogous to the situation in Arizona than
9 this one?

10 A. So I think this one is probably the most -- the most
11 analogous in the sense that it's literally about a citizenship
12 documentation requirement and about participation by citizens
13 and non-citizens, you know, as a result of that.

14 Q. The study does -- I think the Court has -- perhaps the
15 Court hasn't actually heard this yet, but the study does find
16 that there were, within the non-citizen group, some eligible
17 and some ineligible populations.

18 Were you looking at that part of the study?

19 A. Yeah, so -- so that's true. So there -- you know,
20 apparently -- I don't know all the rules on Medicaid, but
21 according to the study apparently there is some non-citizens
22 who can become -- who are eligible for -- for Medicaid.

23 And, you know, the -- the limit -- you know, the
24 limitation is if you care about the impacts on those groups,
25 you can't -- they can't tell. So, essentially, in the data

1 they only see whether you're a citizen or not a citizen. They
2 don't see whether you're a non-citizen eligible for Medicaid
3 versus a non-citizen that's not eligible for Medicaid; and so
4 they can show aggregate affects on non-citizens but,
5 obviously, they can't break it down beyond that.

6 Q. So Professor Sommers' study, is this a randomized
7 controlled experiment?

8 A. It is not.

9 Q. Okay. Do you, nevertheless, believe that he can speak to
10 causation?

11 A. Can you ask that one more time, Kory?

12 Q. Do you, nevertheless, believe that he can speak as to
13 causation?

14 A. Yes, it speaks to causation, again, under what's called
15 this parallel trends assumption, which is, again -- the best
16 way of assessing it is, essentially, are those lines parallel
17 in the pre? So it's not free. It requires an assumption, but
18 it's a common -- it's a common approach and it's -- frankly,
19 it's a well-executed study on this.

20 Q. All right. I'd like to turn away from Medicaid and focus
21 on voter ID and turnout.

22 You've looked at studies on this question?

23 A. Yes.

24 Q. Why don't we start with Cantoni and Pons.

25 What is -- I'll put it on the screen here. What is a

1 Cantoni and Pons study?

2 A. Yeah, so essentially what they're trying to do is put
3 together the biggest panel of data on voting outcomes and --
4 and, again, the -- you know, the intuition is how do you
5 assess whether, you know, these types of laws have a burden on
6 voters? Well, if -- one way is do they have such a large
7 burden on voters that they cause people not to vote?

8 And so they assembled this individual level data set on
9 all -- you know, across all these states for whatever it was,
10 a 10-year time period, and then they're using that same
11 approach, that same difference-in-differences approach.

12 So looking at what happens before versus after state,
13 goes from a non-strict to a strict law, compared to states
14 where there was no change over time; and they're asking does
15 that impact turnout overall or does that impact turnout among
16 these groups that people might be most worried about? You
17 know, for example, blacks, Hispanics, et cetera, and then they
18 find -- they find no effects.

19 Q. What was the size of the data set they used?

20 A. Yeah, it's 1.6 billion observation. So that's 1.6
21 billion individual by election year, I believe, on
22 observations.

23 Q. How does the size of that data set compare to the other
24 studies in this area?

25 A. I mean, so -- so that's huge, obviously. I mean,

1 that's -- that's like -- it's the best data set you could put
2 together to study this question, you know, using variation in
3 those state laws. Like it's -- there's a reason -- it
4 published in the *Quarterly Journal of Economics*, which we've
5 now hit No. 3 of those top five journals in economics.

6 Like -- again, if you're young, this makes your career.
7 Even if you're old, it's a really big deal and it published
8 there. It was published very well.

9 Q. All right. I want to show Page 28 of that study, the
10 Table 3. This is a little bit overwhelming for me as a mere
11 lawyer. Can you explain what we're looking at here, please?

12 A. Yeah, so we're what we're looking at here is essentially
13 the -- the estimates of what is the -- again, under the
14 identifying assumption of diff-in-diff, what is the causal
15 impact of these strict voter identification laws on turnout?

16 If you look at Panel A, what Panel A is picking up is
17 they're showing you differential effects by -- by whether
18 you're white or non-white. And so what you see in the
19 highlighted -- in the highlighted row is that there's a
20 negative estimate. So that's literally minus .6 percentage
21 points is how you would interpret that, but that's nowhere
22 close to being statistically significant.

23 In other words, we'd expect to see effects, you know,
24 even with data of this size due to chance; and then if you
25 look at non-whites, which is that second row, you actually see

1 a positive estimate; and, again, literally in that second row
2 it would be, you know, .6 percentage points but this time it's
3 positive. Again, not statistically different from zero.

4 The other thing I'd point out is that, you know, this
5 study actually finds positive effects on Hispanics. And so,
6 again, to the extent you're worried about whether certain
7 disadvantaged groups are, you know, more negatively affected
8 by these types of laws that arguably increase the cost of
9 voting, if you look at -- I guess that second row highlighted
10 there, the times Hispanic row, what they're seeing is evidence
11 of about a 2.2 to 2.5 percentage point increase in turnout
12 among Hispanics after these laws are introduced relative to
13 before, compared to what's going on in states where there is
14 no change in policy.

15 Q. Was that finding on the effect on Latino turnout
16 statistically significant?

17 A. It is. It certainly is. It's going to be significant at
18 the one percent level in that second column. I believe it
19 would be significant at the 10 percent level in that first
20 column.

21 Q. All right. Let's go back to Page 1. Did they find any
22 -- did they also evaluate the effect of these strict voter ID
23 laws based on age and party?

24 A. They did and they report finding no -- you know, no
25 effects overrule.

1 Q. The Court's heard some testimony previously about the
2 confidence interval for this study.

3 A. Yeah.

4 Q. What does that mean?

5 A. Yeah, so any time -- any time you're doing a study
6 there's some -- there's some statistical uncertainty about the
7 resulting estimate that you get and, you know, it's called the
8 standard error. It gives you a measure of, like, how much
9 uncertainty do I have about that sometime? Like how sure am I
10 that that's the right thing? And you can use that standard
11 error to construct what's called a 95 percent confidence
12 interval.

13 In this case they report that confidence interval in the
14 abstract and it's a roughly, I think, plus or minus three
15 percentage points or two and a half percentage points in this
16 study; and, again, what that -- the literal interpretation of
17 that is if you could imagine -- you know, we have lots of
18 alternative worlds and we run this study in lots of
19 alternative worlds and we do the same thing. That confidence
20 interval says we'd expect that our estimates would land within
21 that interval 95 percent of the time, and it's a bell curve,
22 right.

23 So, like, it's sort of centered around where your
24 estimate is; but what that means is there's some chance, you
25 know, that we'd get -- if we could do this again that we'd get

1 a positive effect or, essentially, there's some chance that
2 there was a positive impact, but there's also some chance
3 there was a small negative impact. Overall, it's not
4 statistically different from zero. It's not -- it's
5 consistent with what we'd expect to see, you know, by chance.

6 Q. Am I correct in recalling that the confidence interval
7 interest ranges from minus 2.6 percent effect on turnout to
8 plus 2.4 percent effect on turnout?

9 A. I think with turnout it goes from minus 3 to 2.8
10 percentage points.

11 Q. Okay.

12 A. Yeah, and registration a little bit tighter than that.

13 Q. And are each of the points on that spectrum equally
14 likely according --

15 A. No, so they're gonna be centered around the actual
16 estimate, which, again, the overall estimate is this minus .1
17 percentage points. If you go and you break it down by race,
18 of course, it's -- you know, if we look at non-whites, it's
19 going to be centered around -- I think it was -- what was it,
20 .6 or .3 percentage points, the table that we just looked at.

21 And so, essentially, you know, the farther away you get
22 from that, the less likely it is that you think that's the
23 true answer.

24 Q. Okay. So we've talked so far about a couple slides, both
25 are which diff-in-diff. Is there a -- are you aware of other

1 studies that do not -- on this question of voter turnout and
2 voter ID that do not rely on diff-in-diff?

3 A. Yes.

4 Q. And there's some -- Panagopoulos is what I'm thinking
5 first. Do you recall that study?

6 A. Yes.

7 Q. Can you tell us about it?

8 A. Yeah, so one of the -- you know -- well, let's back up.

9 So, again, if we think about what's the ideal setting,
10 what's the ideal design to try to get at causality? Well, if
11 you gave me all the power in the world and I used it to, like,
12 try to do really good studies, I would randomly assign these
13 laws across states, right? And if you let me do that, I could
14 do a really great job.

15 Now, I don't think states will let me do that. I'm not
16 quite that powerful so -- but they can do things that are kind
17 of like this, and so there are these survey experiments and
18 Endres and Panagopoulos, I think, right? So they do -- they
19 essentially take advantage of the fact that not everybody in a
20 state is super well informed about what the law is; and so
21 some people might know that there's a voter identification law
22 in place, but a lot of people -- like, maybe they knew and
23 they forgot or they're just not thinking about it very often,
24 right?

25 And so what they do is they send out notifications, and

1 so you might get a card that just says -- that just says,
2 "Hey, there's an election. You should vote," right? But then
3 a randomly-assigned person that's like you is gonna get a card
4 that says, "Hey, there's an election. You should vote; and,
5 by the way, there's a voter identification law in place," and
6 they might tell you varying -- there's differing ways of doing
7 that.

8 And then what they do is they compare across these groups
9 and they say, "Did the people who I told about the voter
10 identification law, were those people more or less likely to
11 vote than the other people?"

12 And that speaks, again, directly to the impact of these
13 things on turnout because -- and, again, the only reason it
14 works is because not everybody is super well informed and so
15 they do this and if you -- yeah, if you put it up there.

16 I mean, essentially what they found is that Democrats
17 were -- were mobilized, right. So when you sent Democrats a
18 note that said, "Hey, there's this voter identification law,"
19 versus just sending them a note about, "Hey, there's an
20 election," they were more likely to subsequently vote.

21 And, which, again, is, like, maybe the opposite of what
22 you would think with respect to this voter cost theory, right?
23 You're finding positive effects, and it turns out this is not
24 all that uncommon in this type of literature.

25 Q. Is this an example of a randomized control experiment?

1 A. Yes.

2 Q. Do you think this speaks to causality?

3 A. Yes.

4 Q. All right, one more in this genre. The Citrin study
5 from -- Citron study from 2014. You're familiar with that
6 study, sir?

7 A. Yes.

8 Q. Can you tell us about the study design there?

9 THE COURT: Why don't we do that one after lunch.

10 We'll take our lunch break. We'll reconvene at 1:00
11 o'clock. Court is in recess.

12 COURTROOM DEPUTY: All rise.

13 *(Whereupon the proceedings adjourned at 11:57 p.m.)*

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REPORTER'S CERTIFICATION

I, TERI VERES, do hereby certify that I am duly appointed and qualified to act as Official Court Reporter for the United States District Court for the District of Arizona.

I FURTHER CERTIFY that the foregoing pages constitute a full, true, and accurate transcript of all of that portion of the proceedings contained herein, had in the above-entitled cause on the date specified therein, and that said transcript was prepared under my direction and control.

DATED at Phoenix, Arizona, this 16th of November, 2023.

s/Teri Veres
TERI VERES, RMR, CRR